Constitutional law is a basic law of a nation which prescribes fundamental principles to regulate the relations of government and its citizens, and also chart out plan and method according to which the public affairs of the nation are to be administered. The Constitution also provides citizens rights and freedoms, which could also be enjoyed within the reasonable limits of the Constitution.

In the Indian context, for the poor, the safe delivery of a healthy child and the survival of both mother and child cannot be taken for granted. The process of ensuring that every child is taken care of as a matter of right involves societal pressure through public action, and democratization of all public institutions. It can be achieved only when the newborn child is welcomed and taken care of. It is a reflection of the country’s normative framework, its legal framework, its institutional framework, its power balances and priorities. In this sense survival of the child and mother is an indicator of the health of the system.

Among the poor, both in rural and urban India, pregnancy and delivery are fraught with risk. The mother’s health or even the child’s survival does not cause anxiety, despite the fact that the child and mother may or may not survive. There is a silent resignation to fate, despite all the advances in medicine. When the child dies, consolation is drawn from the fact that not all is lost, the mother can give birth to more children, there is always another chance.

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The members of the Drafting Committee of the Constitution were of the opinion that in any industry which is making consumer goods or in a social service, like education or health, there is danger of monopolists creating strong private interest which it will never be in the interests of the country to tolerate. With regard to health or the production of drugs or making medicines, or the supply of surgical and other instruments and apparatuses there is every danger of our country being dominated by private monopolists i.e. they wanted to give the power to the representative of the people. The framers of the Constitution intended to save women from exploitation, who works in factories and mines and for this they tried further to add the word 'health' along with word 'strength' of the worker in Article 31 Clause (v) in the draft Constitution.

Under the scheme of distribution of legislative powers between Union and States, protection of life and health have find place at several entries of the Seventh Schedule. Part III to the Constitution

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3 Id at 512. In the Draft Constitution the Clause Reads as follows: "The State shall .... direct its policy toward securing ... that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength". In the present Constitution this clause is in the form of Art. 39 (e) See infra at 3.
4 Health being the state subject, following are few relevant entries given in List II & List III of Schedule VII of the Constitution.
   List II, Entry 6 of the State List "Public Health and Sanitation; Hospitals and dispensaries".
   List II, Entry 8 deals with "Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors."
   List II, Entry 9 speaks of "Relief of the disabled and unemployable".
   List II, Entry 10 speaks of "Burials and burial grounds; cremations and cremation grounds."
   List II, Entry 17 deals with "Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to provision of entry 56 of List 1."
   List III Concurrent List
   List III, Entry 16 talks about "Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient."
   List III, Entry 18 deals with "Adulteration of food stuffs and other goods."
   List III, Entry 20A provides for "Population control and family planning."
   List III, Entry 24 states "Welfare of labour including conditions of work, provident funds, employer’s liability, workmen’s compensation, invalidity and old age pensions and maternity benefits.

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provides fundamental rights to citizens.\textsuperscript{5} One of the most important provisions among these is the right to life and personal liberty.\textsuperscript{6} This article emphasizes that right to live with dignity and a dignified life means a healthy life. The Constitution of India, 1950, also recognizes the government’s responsibility for promoting the health of entire nation, recognized how crucial citizen’s well being was to the functioning of India’s democracy. Following various Provision in Part IV of the Constitution of India directs the state to ensure health and safety of all its people by framing policies in this direction.

**Article 39(e)** of the Constitution of India requires that “the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.”

**Article 39(f)** of the Constitution of India specify that, the State in particular direct its policies towards securing, “that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”

**Article 41** of the Indian Constitution requires that “the State shall, within the limits of its economic capacity and development, make effective provision, for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of underserved want.”

**Article 42** states that “the State shall make provisions for securing just and humane conditions of work and for maternity relief.”

**Article 47** lays down that, “the State shall regard the raising of the level of nutrition and the standard of living of its people


\textsuperscript{6} Article 21 reads as follows, “No person shall be deprived of his life and personal liberty except according to procedure established by law.”
and the improvement of the public health as among its primary duties and, in particular the state shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

Article 48A requires that, "the State shall endeavour to protect and improve environment and to safeguard the forests ...."\(^7\)

The State is under an obligation, to take all steps for improvement of public health and safeguard the right to life of every person.\(^8\) To further strengthen it, the State now has directed to ensure free and compulsory education to all children upto 14 years of age under Article 45.\(^9\)

In the wake of human rights the ambit and scope of this Constitutional right is ever widening. Now the State is mandated to provide to a person all rights essential for the enjoyment of the right to life in its various perspectives of late, the right to health and access to medical treatment has been included in the plethora of rights brought under the ambit of Article 21.\(^10\)

This is one of the articles where; the higher courts have constantly applied their minds and the scope of this article is growing year after year. Thus, as on today, right to life also includes Right to good health and Right to a reasonable health care system.

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\(^7\) Simultaneously, Part IV A, Article 51A of the Constitution in the form of 'Fundamental Duties' of the citizens of India also imposes duty on every citizen of India under clause (g) to protect and improve the natural environment including forests, lake, rivers and wildlife and to have compassion for living creatures.

\(^8\) In M. Vijaya v. The Chairman and Managing Director Singareni Collieries, AIR 2001 AP 502 (para 52). The Andhra Pradesh High Court, held that it was necessary for the State to identify HIV +ive cases and any action taken in that regard could not be termed as unconstitutional. Chief Justice S.B. Sinha, along with Justices B. Subhashan Ready, Dr. Motilal B. Naik, Bilal Nazki and V.V.S. Rao, delivered the judgement.

\(^9\) Recent 86th Amendment Act 2002 added 21 A making education a fundamental right of for all children in the age group 6 to 14 years old. Also under Article 51A, (k) of part IV A duty is enjoined upon every parent or guardian to provide opportunities for education to his child or as the case may be, ward between the age of six and 14 years.

i.e. medical aid, health, insurance, while in service or after retirement was a fundamental right under Article 21. The few following judgments given by the Hon’ble Supreme court of India show that how the magnitude and boundaries of Articles 21 have been enlarged to a great extent.

In this regard, our Apex Court verdict delivered on a public interest litigation related to the rights of the workers of mining and asbestos industries is a historic judgment, which affirms the fundamental right for health care and medical aid for all workers, denial of which denudes the workers of the finer facets of life violating Article 21.\textsuperscript{11}

Citing various earlier judgments wherein the court held that the expression ‘life’ assured in Art. 21 of the Constitution does not connote mere animal existence or continued drudgery throughout life, rather it has a much wider meaning which includes right to livelihood, better standard of life, hygienic conditions in work place and leisure, the Supreme Court laid down guidelines to be adhered to by all the asbestos industries in order to control occupational health hazards and diseases of workmen.\textsuperscript{12} While delivering the judgement Justice K. Ramaswamy stated that:

“Occupational accidents and diseases remain the most appalling human tragedy of modern industry and one of its most serious forms of economic waste. Occupational health hazards and diseases to the workmen employed in asbestos industries are of our concern…..”.\textsuperscript{13}

In this regard, the court further issued the following directions to all the industries.\textsuperscript{14}

\textsuperscript{11} Consumer Education and Research Centre v Union of India AIR1995 SC 922. Health hazards faced by the workers in the Asbestos factories which were brought to the attention of the Supreme Court. A.M. Ahmadi, Ex. C.J.I., Madan Mohan Punchhi and K. Ramaswamy, J.J. delivered this judgement.

\textsuperscript{12} Id at 939 (para 24).

\textsuperscript{13} Id at 925 (para 1).

\textsuperscript{14} Id at 942 (para 33).
• To maintain and keep maintaining the health record of every worker up to a minimum period of 40 years from the beginning of the employment or 15 years after retirement or cessation of the employment which ever is later.

• The Membrane filter test, to detect asbestos fibre should be adopted by all the factories or establishments.

• All the factories whether covered by the Employees State Insurance Act or Workmen’s Compensation Act or otherwise are directed to compulsorily insure health coverage to every worker.

• The Union and the State Governments are directed to review the standards of permissible exposure limit value of fibre/cc in tune with the international standards reducing the permissible content.

• The Union and all the State Governments are directed to consider inclusion of such of those small scale factory or factories or industries to protect health hazards of the worker engaged in the manufacture of asbestos or its ancillary products.

Thus, now the Right to life with human dignity encompasses within its fold, some of the finer facets of human civilization which makes life worth living.

In the case of *Kirloskar Brothers Ltd. v. Employees State Insurance Corp.* The Apex Court, following the *Consumer Education and Research Centre Case*, reiterated that right to health is a fundamental right of the workmen. The health of the workman enables him to enjoy the fruits of his labour, to keep him physically fit and mentally alert. Medical facilities, therefore, is a fundamental right and human right to protect his health since under Article 21 timely medical aid has been held forming part of the right to life. The Court observed that

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15 *AIR 1996 SC 3261.* In this case health insurance, while in service or after retirement, was held to be a fundamental right, and it was stated that even private industries are enjoined to provide health insurance to the workman. This judgement was delivered by three judges bench consisted of Justice K. Ramaswamy, Justice S. Saghir Ahmed and Justice G.B. Pattanaik.

16 *Id* at 3264 (para 8).
Medical facilities are, therefore, part of social security and like gilt-edged security, it would yield immediate return to the employer in the increased production and would reduce absenteeism on grounds of sickness, etc."\textsuperscript{17}

It was also held that health is thus a state of complete physical, mental and social well being. Therefore,

"...The maintenance of health is the most imperative constitutional goal whose realization requires interaction of many social and economic factors. Just and favourable conditions of work implies to ensure safe and healthy working conditions to the workmen. The periodical medical treatment invigorates the health of the workmen and harnesses their human resources. Prevention of occupational disabilities generates devotion and dedication to duty and enthuses the workmen to render efficient service which is a valuable asset for greater productivity to the employer and national production to the State--."\textsuperscript{18}

Further, in the case of \textit{Paschim Banga Khet Mazdoor Smity v State of West Bengal,}\textsuperscript{19} the Division bench of the Supreme Court comprising of justices S.C. Aggarwal and G.T. Nanavati interpreting Article 21, stated in para 9 that,

"The Constitution envisages the establishment of a Welfare State at the federal level as well as at the State level. In a Welfare State, the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the Constitutional obligations undertaken by the Government in a Welfare State. The Government discharges this obligation by running hospitals and health centres which provide medical care to the persons seeking to avail those facilities. Article 21 imposes an obligation on the State to safeguard the right to life of every

\textsuperscript{17} \textit{Id} at 3263 (para 7).
\textsuperscript{18} \textit{Id} at 3264 (para 8)
\textsuperscript{19} AIR 1996 SC 2426. In the instant case, a mazdoor fell from a train suffered serious head and brain injuries. He was sent from one government hospital to another and finally he had to be admitted in private hospital where had to incur an expenditure of Rs. 17,000/- on his treatment. Feeling aggrieved at callous attitude shown by various govt. hospitals, he filed a writ petition in the Supreme Court under Art. 32. The Apex court awarded Rs 25,000 compensation for breach of his right to receive timely treatment.

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person. Preservation of human life is thus of paramount importance, the government hospitals run by the state and the medical officer employed therein, are duty bound to extend medical assistance for preserving human life. Failure on the part of the government hospital to provide timely medical assistance to a person in need of such a treatment, results in the violation of his Right to life guaranteed under Article 21—, and in respect of deprivation of the Constitutional Rights guaranteed under part III of the Constitution, the position is well settled, that, adequate compensation can be awarded by the court for such violation by way of redress in proceeding under Article 32 and 226 of the Constitution.... It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that it is the Constitutional obligation of the state to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done—."

The court issued various directions for improvement of the health services and for ensuring proper medical facilities for handling emergency cases in government hospital and medical centres.

Earlier, in the case of *Parmanand Katara v Union of India*21 where a petition was filed under Article 32 of the Constitution when a doctor refused to treat a patient who met with an accident because of non-compliance of procedural formalities regarding accident victims, the Supreme Court, ordered the medical institutions to provide medical aid and treatment immediately to the victims irrespective of whether the procedural formalities have been complied with or not, and also held that Article 21 imposed an obligation on the State to preserve life conferring a positive right on the citizens to this effect. While delivering the judgement Justice Ranganath Misra observed:

"There can be no second opinion that preservation of human life is of paramount importance. That is so on account of the

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20 Id at 2429-2432 (paras 9,16).
21 AIR 1989 SC 2039. The judgement was delivered by Ranganath Misra and G.L. Oza J.J.
fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of man. The patient whether he be an innocent person or be a criminal, liable to punishment under the laws of the society, it is the obligation of those who are incharge of health of the community to preserve life so that the innocent may be protected and guilty may be punished..... Article 21 of the Constitution casts the obligation on the State to preserve life. The doctor at government hospital positioned to meet the State’s obligation is, therefore, duty bound to extend medical assistance for preserving life. Every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life.22

The observation in the Parmanand Katara case added further impetus to the right to life as guaranteed under Article 21 of the Constitution.23 In Poonam Sharma v. Union of India and Ors.24 the Delhi High Court, held that a citizen of India is entitled to preservation of life not only at the hands of the public authorities, which would include hospital authorities

In the case of D.K. Joshi v. State of Uttar Pradesh & other,25 the Supreme Court had taken notice of the distressing situation of public health in the State of U.P. and inaction of the State government to stop the menace of the unqualified and unregistered medical practitioners proliferating all over the State. The District Magistrates and District Medical officer did not take effective steps to stop this menace which is hazardous to human life.

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22 Id. at 2043 (paras 7,8).
23 Ibid.
24 AIR 2003 Delhi 50. In this case the petitioner is heir and legal representative of one Vinod Kumar Sharma who met with an accident while allegedly driving in a drunken State. He suffered head injury the doctor stitched the wound and gave Brufen tablet. Thereafter, he was arrested for commission of an offence under Motor Vehicle Act, 1988. When he complained of severe headache and was again taken to the same doctor. He was neither hospitalized nor was given further any treatment. His bail was obtained but his condition deteriorated. He was declared dead. The judgement was delivered by division bench comprised of former Chief Justice S.B. Sinha, and Justice A.K. Sikri. See (paras 2,21).
The Court directed the Secretary, Health and Family Welfare Department, State of U.P. to take all necessary steps to stop the unqualified and unregistered medical practitioners in carrying on the medical profession, and also directed to the District Magistrates and the Chief Medical Officers to identify such persons within a time limit to be fixed by the Secretary, Health and Family Welfare Department. All the District Magistrates and Chief Medical Officers were required to monitor the action taken against such persons. It was also directed that the Secretary, Health and Family Welfare Department should give due publicity to the names of such unqualified/unregistered medical practitioners so that people do not approach such persons for medical treatment, also issue necessary directions from time to time to these officer so that such unauthorized persons couldn’t pursue their medical profession in the State.26

With regard to reimbursement of medical treatment of the employees, in the case of State of Punjab v. Ram Lubhaya Bagga etc.,27 the Apex Court recognised that when Government forms its policy, it is based on number of circumstances on facts, law including constraints based on its resources.28 The court held that:

“...Where according to new government policy the employee was given free choice to get treatment in any private hospital in India, but due to financial constraints, the reimbursement was allowed to the level of expenditure as per the rate fixed by the Director, Health and Family Welfare, for a similar treatment package or actual expenditure whichever is less, a committee of technical experts was constituted by the Director, Health and Family Welfare to finalize the roles of various treatment packages29... No State of any country can have unlimited resources to spend on any of its project. That is why provision

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26 Id at 82 (para 6)
27 AIR 1998 SC 1703, This verdict was delivered by Justice S.B. Majmudar, M. Jagannadha Rao and Justice A.P. Mishra, J.J.
28 Id at 1704.
29 Id at 1711 (paras 27.28)
of health facilities can not be unlimited. It has to be to the extent finance permit." The principle of fixation of rate and scale under this new policy was justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India.\textsuperscript{30}

The court also stated that the treatment of a disease in a country abroad would be permitted in extremely rare cases where satisfactory treatment is not available in the country. Prior approval of the State Medical Board shall be a pre-requisite in such cases.\textsuperscript{31}

Further, in the case of \textit{Vincent Panikurlangara v. Union of India},\textsuperscript{32} the hon'ble Supreme Court emphasized that a healthy body is the very foundation for all human activities. In a welfare state, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health. The Court also observed that the maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community, and on the betterment of these, depends the building of the society of which the Constitution makers envisaged. To quote:

"The branch of health care of citizens involves an ever changing challenge. The problem is a shifting one and one cannot have a fixed process to deal with such situations that would arise from time to time. "---The Central Government on the basis of the expert advice can indeed adopt an approved national policy and prescribe an adequate number of formulations which would on the whole meet the requirement of the people at large. Obviously, instant attention has to be bestowed to keep abreast of the changing situations and make proper and timely amends. While laying the guidelines on this score, injurious drugs should be totally eliminated from the

\textsuperscript{30} \textit{Ibid} (para 29)
\textsuperscript{31} \textit{Id} at 1709.
\textsuperscript{32} \textit{AIR} 1987 SC 990, In the instant case, the petitioner had sought directions to in public interest, to ban import, manufacture, sale and distribution of such drugs which have been recommended for banning by the drugs Consultative Committee. The Court emphasized that Injurious drugs should be totally eliminated from the market. It was a matter to be handled by the Central Government keeping in view the best interests of the citizens. The verdict was given by Ranganath Misra and M.M. Dutt, J.J.
market. Great care in this regard has to be taken. Such drugs as are found necessary should be manufactured in abundance and availability to satisfy every demand should be ensured. Undue competition in the matter of production of drugs by allowing too many substitutes should be reduced as it introduces unhealthy practice and ultimately tends to affect quality.33

The Court, accordingly directed the Central Government to compensate and reimburse the petitioner for the expenses of his recognition of his services for asking for directions for maintenance of approved standard of drugs and banning of injurious and harmful drugs.

The court also observed that attending to public health, in our opinion, therefore, is of high priority – perhaps the one at the top.34

**HIV Positive Persons**

With in the last few years, several pronouncements have been made by the Supreme Court and the High Courts concerning HIV infected persons. While deciding the issues like: Can a doctor disclose to the would be wife of a person that he is HIV positive? Does it infringe the right to privacy of the person concerned?, the judiciary has answered in the negative. The Apex Court in one of such cases held that the lady proposing to marry such a person is also entitled to all the human rights. The right to life under Article 21 would positively include the right to be told that a person with whom she was proposed to be married, that he was the victim of a deadly disease which was sexually communicable.35 While delivering the judgement, the Division Bench comprising of Justices S. Saghir Ahmad and B.N. Kirpal stated that:

"The right to privacy is an essential component of right to life envisaged by Art. 21. The right, however, is not absolute and

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33 *Id* at 996 (paras 19,20).
34 *Id*, at 995 (para 16). Also see for more details *infra* at 38.
35 *Mr. X v. Hospital Z* AIR 1999 SC 495.
may be lawfully restricted for the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others. As such when the patient was found to be HIV(+), its disclosure by the Doctor would not be violative of either the rule of confidentiality or the patient’s right of privacy. As the lady with whom the patient was likely to be married was saved in time by such disclosure, or else, she too would have been infected with the dreadful disease if marriage had taken place and consummated.\textsuperscript{36}

The court further emphasized that marriage is the sacred union, legally permissible, of two healthy bodies of opposite sexes. When two souls thus unite, a new soul comes into existence. That is how, the life goes on and on, on this planet. Mental and physical health is of prime importance in a marriage, as one of the objects of the marriage is the procreation of equally health children.\textsuperscript{37}

\textbf{Food and Public Health}

In \textit{Shaibya Shukla v. State of U.P.}\textsuperscript{38} when the tender were invited as regards auction of the chemically treated soyabean, which was unfit for human consumption, the tender notice as well as auction was held invalid when it was offered to the public in general. The court said it is negation of principle laws under Articles 21, 47, 48 of the Constitution of India, as its offer for sale by auction in general market to any one, is likely to create danger to the life and health of human being as well as animals also. The court also held that Articles 47 and Article 48 of the Constitution of India respectively contain directions which impose duty on the State to raise level of nutrition and standard of living and improve public health.

Again, the similar matter came before the consideration of Supreme Court in \textit{Tapan Kumar Sadhu Khan v. Food}

\textsuperscript{36} \textit{Id} at 501 (paras 27,28).
\textsuperscript{37} \textit{Id} at 502 (paras 30,31).
\textsuperscript{38} \textit{AIR} 1993 Allahabad 171, Justice S. Saghir Ahmad and Justice H.N. Tilhari were the judges who delivered this judgement.
Corporation of India and Others,39 where the hon'ble court directed the Food Corporation of India to secure a commanding position in the foodgrains trade of the country. Being an agency of the State, it must confirm to the letter and spirit of Article 47 of the Constitution. The trading activity in rice and other foodgrains must be done keeping in view the obligation to improve public health. The stock that is found suitable cannot be immediately used for human consumption, for that can be so used only after being upgraded. If substandard rice is released and sold in the open market, it would be highly injurious to the consumers. Public health would be jeopardized if such rice is consumed by members of the public. A mere undertaking is no guarantee that the dealer will upgrade the rice before marketing the same. The most ideal solution is that FCI should itself upgrade the rice before sale.40

Rehabilitation of Tsunami Victims and their Health

In the case of Kranti v. Union of India and others,41 the division bench of the Supreme Court held that the work of rehabilitation of tsunami victims in the Andaman and Nicobar Islands though has been taken up in all earnest, yet there is still a

39 (1996) 6 SC 101 CJI Ahmadi along with N.P. Singh and S.C. Sen J. comprised the Bench. The appellant, Tapan Kumar Sadhukhan, claimed to be interested in the subject matter of the case as proprietor of one M/S Ma Kali Trading company dealing in manufacture and supply of cattle food, poultry food, manure etc. as a registered contractor of Respondent 1. His plea was that rice which was unfit for human consumption was sought to be sold as substandard/damaged rice, subject to upgradation by the purchasers. The appellant further claimed that the quality control manual issued by Respondent 1 relating to the central legislation regarding foodgrains handling, made no provision for sale of substandard/damaged rice for human consumption and does not prescribe that such substandard damaged rice can be upgraded for making it fit for human consumption. The appellant expressed concern that while selling these rice respondent was not taking any responsibility. In the present case civil appeal arose out of an order of Division Bench of the High Court of Calcutta. Id at 105

ld, at 102 (paras 13,22)

40 (2007) 6 SCC 744. This judgement was delivered by Justice C.K. Thakkar and Justice Altamas Kabir. The special leave petition filed against the judgement passed by the circuit Bench of the Calcutta High Court at Port Blair on 16.1.2006 (PIL). The writ petition recounts the various problems that were being faced by the Islanders in the wake of the Tsunami and the steps that could be taken to mitigate their sufferings.

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good deal which is required to be done to ameliorate the misery of
the victims. Each of the problems elaborated by the writ petitioners
needs to be dealt with, to enable the victims of the tsunami families
to cope with the disaster. The court acknowledged that the monsoons
are due at any time to add to the misery of those who were rendered
homeless by the tsunami. Spread of diseases is a serious threat as
also the spectre of hunger. Therefore, the court directed that the
immediate action must be taken for health facilities, lack of drinking
water, end shortage of food. The court also directed the local
administration to arrange for preservation of the rainwater by means
of rainwater harvesting and construction of ponds, where the
rainwater could be collected and used. As far as the lack of health
facilities are concerned, it was pointed out that where population was
of about 6000 people there was only a male doctor, there was no
lady doctor there to treat women patients, and when the only doctor
available goes on leave there was no replacement. The court as
suggested by the petitioner directed the administration to take
immediate steps to arrange for more doctors who if necessary could
be airlifted to the different islands in emergent situations.42

Faith Healing as a Form of Curing Ailments

In the case of Rajesh Kumar Srivastava v. A.P. Verma,43
Justice Sunil Ambwani of the Allahabad High Court held that the
right to cure ailments through religious practices including “faith
healing” cannot be claimed as fundamental right. No person has an
absolute right to freedom of religion. Every form and method of
curing and healing must have established procedures, which must
be proved by known and accepted methods, and verified and

42 Id, at 747.
43 AIR 2005 All 175. In the instant case, the society have an individual right to believe
that the chanting of ‘Om Namoh Shivai’ is a cure of all ailments but they have no
right to impose by professing and practicing on others to believe and to propagate
the same belief in a public place by charging fee by way of consideration or
contribution to any temple or to the society.
approved by experts in the field of medicines. It is only when a particular form, method of path is accepted by the experts in the field of medicines that it can be permitted to be practiced in public. Where the right to health is regulated by validly enacted legislation, the right to cure the ailment through religious practices including 'faith healing' cannot be claimed as a fundamental right.

To safeguard the public health, safety, and welfare, morality is one of the most basic of the governmental powers. Yet its exercise always raises serious questions because that exercise invariably involves a clash between the rights that are fundamental to a society. Incidentally, our Constitution does not provide explicit help in resolving these kinds of problems, whereas the liberal democratic society after all has real and fundamental interest in protecting individual liberty as well as public health, morals and safety as rightly said by Jagdish Swarup.44

In the light of Constitutional mandate towards the right to health, the Indian Government has enacted a large number of legislation alongwith rules appended to certain Acts in the direction of improving, strengthening and regulating the right to health. Some of these are listed below:

- The Indian Penal code, 1860.
- The Epidemic Diseases Act, 1897.
- The Drugs and Cosmetics Act, 1940, Rules 2008
- The Drugs (Control) Act, 1950.
- The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.
- The Drugs (Price Control) order, 1995
- Prevention of Food and Adulteration Act, 1954.

44 supra note 10, at 1106.


The Bio Medical Waste (Management and Handling Rules, 1998),

The statutes, in brief, are discussed as below:

(i) **Indian Penal Code, 1860**

The Indian Penal Code, 1860, is a meticulously drafted document. Though it is an old Act, it has, by and large, stood the test of time. It consists of 23 chapters. The important Provisions from the point of view of medicine and health are mainly sections 269-294A, and sections 299-377, which are given below:

**Section 269 of the Code reads as**, “Whoever unlawfully or negligently does any act which is and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, should be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”

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45 Chapter XIV of the IPC 1860 (“of offences affecting the public health, safety, convenience, decency and morals”).
46 *Id.* Chapter XVI (“of offences affecting the human body”).
This section is aimed at preventing spread of infectious disease dangerous to life. This section refers to infectious diseases which may be dangerous to life, like HIV/AIDS infection.

**Section 270 of the Code talks about Malignant act likely to spread infection of disease dangerous to life.** It says, "whoever malignantly does any act which is, and which he knows or had reasons to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both."

This denotes a deliberate intention on the part of the accused to spread through his acts infections dangerous to life of other persons.

**Section 271** says “whoever knowingly disobeys any rule made and promulgated by the Government for putting any vessels into a State of quarantine, or for regulating the intercourse of vessels in a State of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both”.

**Section 272 reads as,** “whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.”

**Section 273 reads as,** “whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.”

**Section 274 says that** “Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or
knowing it to be likely that it will be sold or used for, any medical purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description, for term which may extend to six months, or with fine which may extend to one thousand or with both.”

Section 275 provides as “whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

Section 276 of the code punishes selling or offering or issuing a drug different from the one purported.

Section 278 of the Code reads as, “whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Section 290 says “whoever commits a public nuisance in any case (u/s 268, IPC) not otherwise punishable by this code shall be punished with fine which may extend to two hundred rupees.”

(ii) The Epidemic Diseases Act, 1897

The Act was passed to enable state governments to take measures to contain and to prevent the spread of any dangerous epidemic diseases if the existing laws are found to be inadequate to meet such contingencies. Hence, such orders and regulations are usually applicable while the danger of the epidemic exists or is perceived to exist. This is a very brief legislation originally consisting

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47 Section 268 of the IPC deals with Public nuisance. It says that a person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. A common excuse is not excused on the ground that it causes some convenience or advantage.
of four sections but later on section 2-A was substituted Section 1 makes the Act applicable to the whole of India. Section 2 concerns special measures for control of epidemic diseases.48 Under Section 2 of this Act, if the State government is satisfied that an epidemic disease has occurred in any part of the State or the State is threatened by such an epidemic and considers that the provisions of the existing laws are insufficient to meet the requirement, it may take or empower any of its officers to take/prescribe such suitable measures after duly notifying the public. It may also determine the manner and by whom any expenses incurred shall be paid including compensation, if any. All measures are to be observed by the public or a person or a class of persons as it shall deem necessary to prevent the outbreak or spread of such disease. Under Section 3 of the Act any person disobeying any order or regulation made under this Act shall be deemed to have committed an offence punishable under Sec. 188 of the Indian Penal Code.49 Several State Governments have amended this section further as per their requirement.50

48 Recently a day after WHO declared swine flu a pandemic that's spreading in India the Delhi government too moved quickly and invoked the Epidemic Diseases Act, 1897, if any swine flu afflicted patient refuses to come to hospital, the government could invoke the provision of the Act. (www.tribuneindia.com/2009/ 20090613/ main4.htm (accessed on July 17, 2009.)
49 Sec. 188 of IPC reads as, “Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act or to take certain order with certain property in his possession or under his management, disobeys such direction. Shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to causes danger to human life, health or safety ……, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.”
50 Bihar, Himachal Pradesh, Madhya Pradesh, Maharashtra and Punjab, Haryana and Chandigarh have amended Section 2(a) of the Act vide epidemic diseases (Punjab Amendment) Act 1944 (3 of 1944). For instance Punjab and Haryana and Chandigarh has added in Sec. 2(2) clause (3).
Section 2-A empowers the Central Government to take measures and prescribe regulation for the inspection of any ship/vessel leaving or arriving at any port in the Indian territory and also for their detention or detention of any person intending to sail therein or arriving thereby, as it may be necessary when the government is satisfied that India or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease and provisions of ordinary law are inadequate for the time being to it.

The Government may also take measures without prejudicing the provisions of the Epidemic Act, and prescribe regulations for inspection of persons traveling by road, rail, air or sea or other means and consider segregation of persons suspected of being infected with any such disease either in a hospital, temporary accommodation or other suitable means. In *J. Choudhury v. The State*, the government of Orissa had made certain regulations under Section 2(1) of the Epidemic Diseases Act, 1897, of which regulation 7 required the person to be inoculated against cholera. But the petitioner refused to get himself inoculated against cholera saying that he had a conscientious objection against cholera saying that he had taken sufficient preventive homoeopathic medicine to protect himself against an attack of cholera. The court observed:

"...If the petitioner feels that the Homoeopathic method of providing immunity against attack of cholera should be put on a par with the allopathic method of inoculation, it is open to him to move the appropriate authorities and get a suitable exemption clause inserted in the regulations. But in absence of such an exemption clause he must be held to have contravened the provisions of the said regulations."

This measure at presently being adopted in order to prevent swine flu incidents in India. After the death of 14 year old girl in

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51 It was added by Act 38 of 1920, Sec. 2 and Sch.l.
52 Manu/OR/0073/1963. At that time the judgement was delivered by C.J. R.L. Narasimham.
53 *Id* (para 6)
Pune from swine flu the Epidemic Act has been invoked in the Pune and Satara by Maharashtra Government. Union Health Minister Gulam Nabi Azad, allaying the fears of the masses, said the relevant amendments in the said Act, rules will be made soon.54

It is submitted that, this Act is colonial and antiquated is not relevant in the present time. Since it does not even mention present day threats such as the H5N1 avian influenza virus or HIV. Nor does it address issues such as negligence by doctors in dealing such causalities. The said Act is archaic and inadequate to deal with pandemics like H1N1 influenza. Under this Act all offences are non-compoundable which the court could punish. The need is to replace this Act in order to improve India’s preparedness in combating a public health emergency like an epidemic or a bioterrorism attack. Though in this direction the Public Health (Prevention Control and Management of Epidemics, Bio-terrorism and Disasters) Bill, 2008 draft Bill, was finalized by the health ministry to replace the old Epidemic Act, yet unfortunately the bill was never cleared by the Cabinet,55 for the reasons best known to the government.

(iii) The Drugs and Cosmetics Act, 1940

The 'Drug or 'Medicine' is an important tool in the health care system of any country. Unless the drugs of good quality, purity and safety are made available, the entire health care exercise will be meaningless. Hence, in pursuance of this object, the Government of

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54 First Swine Flu case in India was reported from Hyderabad. Mr. Azad did admit that one test of Swine Flu per person cost approximately around Rs.10,000/- and here, everyone can not be tested for this.

55 'Antiquated Law hobbles fight against H1N1' The Times of India August 7, 2009. Since at present health is a State subject, the Centre can only issue guidelines and notifications to states on how to handle pandemics but cannot force them to act. This new bill authorized the Centre to prescribe temporary regulations to prevent an out break and the bill called for 2-7 years Jail and penalty of Rs. 2-10 lakh fine for such offences. It specifically listed 32 diseases including avian influenza, HIV, cholera malaria, dengue, rabies, SARS, Plague and T.B.
India was forced to introduce a legislation to control the manufacture and trading in drugs. Accordingly, the first law namely *The Dangerous Drugs Act 1930* was passed. Considering the rapid expansion of pharmaceuticals production and its market and based on the recommendations of the Chopra Committee, another 'Drug Act' was passed during 1940 wherein the term 'Cosmetics' was included by the legislation in 1964. This act is now being called as 'Drugs and Cosmetics Act, 1940' which controls the manufacture and sale of drugs and cosmetics in India. During 1945, Government of India made certain rules under this Act for its proper enforcement which are known as 'Drugs and Cosmetics Rules, 1945.

The aim of *The Drugs and Cosmetics Act, 1940* is to regulate the import, manufacture, distribution and sale of drugs and cosmetics. The quality and purity of the drugs are the main objects of the Act. It comprises of five chapters and 38 sections and two schedules. The Act has been amended on some occasions after independence in keeping with the changing circumstances. Sec 3 (b), of the said Act explains the meaning of the term “Drug” which includes:

(i) all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals, including preparations applied on human body for the purpose of repelling insects like mosquitoes;

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56 The Government of India appointed the Drugs Enquiry Committee in 1930 with Sir R.N. Chopra as its Chairman to enquire into the extent of the quality and strength of drugs imported manufactured or sold in India and to recommend steps for controlling such imports. The committee’s report pointed out the necessity of exercising control over import, manufacture and sale of patent and proprietary medicines in the interest of the safety of the public and public health. As a result of the Chopra Committee Report the Drugs Act was passed in 1940 and came into force on 10th April, 1940. [http://www.india.kanoon.org/doc/59148](http://www.india.kanoon.org/doc/59148) (accessed on August 4, 2009).


58 The Drugs and Cosmetics Act, 1940.
(ii) Such Substances (other than food) intended to affect the structure or function of the human body or intended to be used for the destruction of vermin or insects which cause disease in human beings or animals as may be specified from time to time by the Central Government by notification in the official Gazette;

(iii) All substances intended for use as a component of a drug including gelatine capsules are also drugs.

Further Sec 2 (d) of the Drugs (Price Control) order 1987 also explain the term drugs includes in its meaning ‘bulk drugs and formulations’.

Sec 2 (a) of the order 1987 explains "bulk drug" which means any substance including pharmaceutical chemical, or biological or plant product or medicinal gas conforming to pharmacopoeial or other standards accepted under the Drugs and Cosmetic Act, 1940, which is used as such, or as an ingredient in any formulation.

Under Section 6 of the Act of 1940, power is given to the Central Government to establish a Central Drug Laboratory under the control of a Director in order to carry out the functions entrusted to it by the said Act.59

Further, under the Act of 1940, the Central Government may constitute an advisory committee to be called the Drugs Consultative Committee to advise the Central Government, State Government and the Drugs Technical Advisory Board on any matter tending to secure uniformity throughout the country in the administration of Act.60

This statute also prohibits the import of

1) any not of standard quality drug/cosmetic61
2) any misbranded or spurious drugs62
3) any adulterated drugs63

59 Id Section 6.
60 Id, Sec 7,
61 Id, Sec 8
62 Id, Sec 9, Sec 9-B
63 Id, Sec – 9 A
4) Any drug or cosmetics for the import of which a license is prescribed.64

5) any patent drug or proprietary medicine if it is not labelled in the prescribed manner displaying its true formula.65

6) any drug if it is manufactured under a name which belongs to another drug or if it is an imitation of or is a substitute for, another drug or resembles another drug in a manner upon its label unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug.66

7) any misbranded cosmetic containing harmful or toxic substance which is injurious to health.67

8) The Centre and State Government shall appoint analyst and inspector, for inspection monitoring and analysis of sampled drugs.68

The inspector on suspecting the quality of drug can get it tested by the Government analyst who will deliver his report which will be taken as conclusion evidence in a court if challenged by the accused in the court, the drug will be sent to Central Drug Laboratory whose decision will be binding on both the parties.

Sections 27 to 30 cover the penalties for the violation of the various provisions of the Act for instance, When the drug is found to be spurious under the Act or which when used by any person for or in the diagnosis, treatment, mitigation, or prevention of any disease or disorder, is likely to cause his death or is likely to cause such harm on his body as would amount to grievous hurt within the meaning of section 320 of the IPC,69 solely on account of such drug

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64 Id, Sec 10 (c)
65 Id, Sec. 10(d)
66 Id, Sec 17 B.
67 Id, Sec 9 C.
68 Id, (Sec 33 F) 33 G.
69 Section 320 of the IPC 1860 says that "The following kinds of hurt only are designated as "grievous":-
1. Emasculation
2. Permanent privation of the sight of either eye
3. Permanent privation of the hearing of either ear.
4. Privation of any member or joint
being adulterated or spurious or not of standard quality, as the case
may be, punishment in the form of with imprisonment for a term
which shall not be less than five years but which may extend to a
term of life and with fine which shall not be less than ten thousand
rupees can be awarded.  

So far as the law was very mild. No action could be taken
against those who were caught. Now, The Drugs and cosmetics
(Amendment) Act, 2008, has been enacted and the gazettee
notification thereof, provides stricter penalties for offences relating to
spurious and sub-standard drugs. Offences relating to sale and
manufacture of spurious and adulterated drugs have been made
cognizable and non-bailable offences. Penalties relating to
manufacture of adulterated drugs or manufacture without a valid
licence has been increased to imprisonment for a term not less
than three years and a fine not less than Rs. 1 lakh. Peddlers of
spurious drugs will face life imprisonment and/or fine of Rs. 10
lakh or three times the value of the drugs confiscated whichever is
more. Scientists violating and conducting unsafe and unethical
clinical trials will face imprisonment of five years and a fine of Rs.
20 lakh. The fines realized in such cases will be paid to the
relative of the deceased. A provision has also been introduced
giving power to the Central Government to regulate or restrict and

5. Destruction or permanent impairing of the powers of any member or joint
6. Permanent disfiguration of the head or face
7. Fracture or dislocation of a bone or tooth
8. Any hurt which endangers life or which causes the sufferer to be during the
space of twenty days in severe bodily pain, or unable to follow his ordinary
pursuits.

70 Id Section 27

71 The said Act (No. 26 of, 2008) received the assent of the president on the 6th
December, 2008 and it is notified and came into force on 10th August, 2009.
Amendment of sec 27 clause (ii) (b),(c) is substituted, amendment of sec 27 A,
amendment_2008.pdf (accessed on September 11,2008)
manufacture of drugs in public interest. Penality for selling a fake unani, ayurvedic and siddha drug has been raised to Rs. 50,000 or three times the value of drug confiscated.

Judicial Response

In the case of Laxmi Kant v. Union of India,\(^{72}\) the Government of India imposed total prohibition on the use of tobacco in tooth paste and tooth powders under Sec. 33-EED of Drugs and Cosmetics Act, 1940.\(^{73}\) It was argued whether this ban is in the public interest or it offends the right to carry on trade as guaranteed under Art. 19(1)(g) of the Constitution? The court observed that the use of tobacco in tooth pastes/tooth powders is likely to involve risk to human beings. The Court reiterated following recommendations which were expressed in the International Conference:

“...The conference recognized tobacco as a major public health hazard and also noted that no further research was needed to start tobacco control activities, as sufficient scientific evidence is already available about ill effects on health due to use of tobacco besides its being addictive...”\(^{74}\)

Therefore, the International Conference held in collaboration with WHO was of the opinion that the ban on use of tobacco in tooth paste and tooth powder should totally be imposed since it is prone to cancer. Therefore the imposition of total ban on tobacco was said to be constitutionally valid and is in the public interest.

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\(^{72}\) 1997 (4) SCC 739. The Division Bench comprised of Justice K. Ramaswamy and Justice D. P. Wadhwa.  
\(^{73}\) Sec. 33-EED talks about the power of Central Government to prohibit, manufacture, etc. of Ayurvedic, Siddha Or Unani drugs in Public interests, if the government is satisfied on the basis of any evidence or other material available before it that the use of any such drug is likely to involve any risk to human beings or animals or that any such drug does not have the therapeutic value claimed or purposed to be claimed for it and that in the public interest it is expedient so to do then, that Government may by notification in the official gazette, prohibit the manufacture sale or distribution of such drug.  
\(^{74}\) Supra note 72 at 740-741 (paras 9,10).
In Manju Kumari v. State of Bihar, in the instant case, the samples of the drugs which were collected during the search and seizure were sent to the Drugs Control Laboratory, Government of Bihar, for analysis and report. The drug control laboratory submitted its report where in it was mentioned that samples of the manufactured drugs were found to be up to the mark and as per the limit laid down in Sch.I of the Drugs and Cosmetics Act 1940 and Rules 1945, but in course of raid it was found that medicines of different brands were being prepared and packed illegally and the manufacturing work was being done in unhealthy manner with intention to cheat the customers which is dangerous for human life, and is a cognizable offence. It was found that police has no jurisdiction to register and investigate into the offence under the Act. In view of the discussions made in the case and considering the provisions of law investigation by the police on the basis of the first information report as well as submission of the charge sheet, the court observed that it is wholly illegal and without jurisdiction. The prosecution of the petitioners are quashed and the court allowed the application.

(iv) The Drugs (Control) Act, 1950

The Act was passed on the 7th day of April, 1952 and the purpose was to provide for the control of the sale, supply and distribution of the drugs. This statute act comprises of 20 sections. Section 5 is an important section of this Act as it provides that no dealer or producer shall:

(a) sell, agree to sell, offer for sale or otherwise dispose of, to any person any drug for a price or at a rate exceeding the maximum fixed by notification under clause [a] of subsection (1) of section 4;
(b) have in his possession at any one time a quantity of any
drug exceeding the maximum fixed by notification under
clause [b] of subsection (1) of section 4. or

(c) sell, agree to sell or offer for sale to any person in any one
transaction a quality of any drug exceeding the maximum
fixed by notification under clause [c] of subsection (1) of
sec 477. Penalty for violation of the Act may be fine or
imprisonment upto three years or both.78

(v) The Drugs and Magic Remedies (objectionable

The Act comprised of 16 sections and one schedule. This Act
provides for prevention of advertisements which may be exploited by
unscrupulous and commercially oriented personnel for inducing
people for self medication of fraudulent or exploitative or dangerous
and harmful nature. So the purpose of the said legislation is to put a
stop to such undesirable advertisements. Section 4 of the Act
prohibits taking part in the publication of any advertisement relating
to a drug which directly or indirectly gives a false impression
regarding its true character or makes a false claim or is otherwise
misleading. Any person who has read, seen or heard such an
advertisement is empowered to lodge a complaint with the police or
the court at the place where such an advertisement. Section 779
refers the penalty for violation of the Act, which is imprisonment

77 Id. Section 4 of the Act states that the Chief Commissioner may by notification in
the official Gazette, fix the maximum prices and maximum quantities for any drug
which may be charged by dealer or producer or possessed by a dealer for producer.
The prices or rates and quantities fixed may be different in different localities. The
act was notified on 7th April 1950.

78 Section 13, The Drugs (control) Act 1950. Section 4 of the Act states that the Chief
Commissioner may by notification in the official Gazette, fix the maximum prices
and maximum quantities for any drug which may be charged by dealer or producer
or possessed by a dealer for producer. The prices or rates and quantities fixed may
be different in different localities.

79 See for details The Drugs and Magic Remedies (Objectionable Advertisement) Act,
1954. The said act was notified on 30th April 1954 and came into force on 1st April
1955.
upto six months or fine or with both. For subsequent conviction, imprisonment may extend to one year or with fine or both.

According to the Drugs and Cosmetics Act 1940, any drugs that has been manufactured by compromising its quality or has been stored in such a way that it last its properties but according to the Ministry of Health, about five percent of the drugs sold in the country are counterfeit and 0.3 percent are spurious. So, it is not easy to tell or identify a fake drug from a genuine one. Only a series of chemical analysis can reveal a drug’s spurious nature. One reason for the proliferation of spurious drugs in our country is that there are not enough drug inspectors who can keep a check on quality. The acute shortage of drug inspectors makes it easier for dealers and manufactures of spurious drugs to operate with impunity. There is just about one inspector for every 500 chemists in cities like Delhi. There is only seven of the two dozen testing labs across India are functional.

Besides this, we don't even have an effective adverse drug reaction report system to monitor where and when patients are experiencing an adverse reaction to drugs. In India it is not mandatory for hospitals to report to a nodal agency. If a patient has adverse reactions after taking a prescribed medicine people do have the option of going to the consumer courts in case they feel that they have been duped by fake drugs. The Union health minister, Ghulam Nabi Azad, recently announced a "whistle blower policy" aimed encouraging the common man to provide information about the manufacture of fake drugs. The health ministry plans to give cash rewards to both the informer and the officer who seizes adulterated, spurious or misbranded drugs and cosmetics. The government hopes that a cash reward will lead to more people coming forward with
such information. In such a scenario, experts point out that merely announcing a policy will not be enough. One of the major drawbacks of this policy is that people might try to make money out of it by making fictitious claims. The ministry is yet to decide on a vital issue like how to implement the policy which needs to be altered. It is only when the government takes strong measures to implement the policy and provisions of the Act that the consumer will benefit.

**Judicial Response**

In *Hamdard Dwakhana and Anr. v Union of India*, it was held that “Commercial advertisements were not covered within the concept of freedom of speech and expression. The Drugs and Magic Remedies (objectionable Advertisements) Act, 1954 was passed with a view to the prevention of self medication and self-treatment by prohibiting the publication of advertisements of drugs having magic qualities for curing diseases. The Act was challenged as violative of the freedom of speech and expression guaranteed under Article 19(1)(a). While delivering the judgement Justice Kapur stated as follows:-

“...The restriction is about the advertisement to the people in general. I say that the main object and purpose of the Act is to prevent people from self-medicating with regard to various serious diseases. Self-medication in respect of diseases of serious nature mentioned in the Act and Rules has a deleterious effect on the health of the community and is likely to affect the well being of the people. Having thus found that some medicines have tendency to induce people to resort to self medication by reason of elated advertisements, it was though necessary in the interest of public health that the puffing up of the advertisements is put to a complete check and that the manufactures are compelled to route their products through recognized sources so that the products of...”

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80 'Blowing the whistle on fake drugs'
http://www.telegraphindia.com/1090831/JSP/ateisure/story-11430759.JSP
(accessed on September 12, 2009)

these manufactures could be put to valid and proper test and consideration by expert agencies.\textsuperscript{82}

In \textit{Kantirani Jaynarayan Mangal case}\textsuperscript{83}, the petition was filed by the accused challenging the order of conviction passed against her for the contravention of the provisions under sec. 7 read with sec.3 (d) of the Drugs and Magic Remedies (objectionable Advertisement) Act, 1954. Relying upon the various referred cases, the court held that the publication of an advertisement amount to an offence, should have reference to a drug and that drug should have been suggested as a cure for certain ailments as mentioned in section 3 of the said Act. The Bombay High Court further observed that the said advertisement and the instrument had no reference to any such ailments at all. Setting aside the conviction of the accused Justice S. J. Deshpande in para 20 stated:

"...I am also disposed to think that the Act was passed in 1952 and we are living in 1982. The things and surrounding have changed so fast that the very concept of the objectionable advertisement will have to be re-examined in the new environment of permissive culture emerging around us. It would be hazardous to regard such advertisement as objectionable......"

It is submitted that this statute is being violated till today as number of such advertisements in contravention of the objective of the Act are being shown on print and electronic media everyday. Advertisements, for instance, for quickly reducing fact from the body by use of so called herbal, Ayurvedic medicines or use of exercise machines, or for curing impotency and sex relating problems or to

\textsuperscript{82} \textit{id} at 558 (para 4)

\textsuperscript{83} \textit{Kantirani Jaynarayan Mangal v. The State of Maharashtra, 1982 Cri.L.J. 1454 at 1460. The accused (Smt. Kantirani J. Mangal) was selling the articles known as Lust Developer and while advertising this Lust Developer which is an instrument to be used for proper development of breasts of a woman, it is alleged that the accused had advertised a booklet depicting the photograph of a woman showing the use of bust developer the instrument and the booklet are sold to the customers and are separately charged."
sharpen memory of kids or to look young etc. are influencing the psychology of people a lot, who get trapped by these advertisements and use these products causing ultimately harm to their health. Hence, there is need to strictly implement the provision of the said Act and quantum of punishment needs to be made stringent through amendment in the present times.

(vi) The Drugs Policy of 1986

Drugs and formulation have been subjected to price control for more than three decades now. The Drug policy of 1986, which was titled "Measures for Rationalisation, Quality Control and Growth of Drugs & Pharmaceuticals Industry in India" was evolved under the dynamic guidance and Leadership of late Shri Rajiv Gandhi. The main objectives of the Drug Policy 1986 are as under:84

a. ensuring abundant availability, at reasonable prices of essential aid life saving and prophylactic medicines of good quality;

b. strengthening the system of quality control over drug production and promoting the rational use of drugs in the country;

c. creating an environment conducive to channelising new investment into the pharmaceutical industry to encouraging cost effective production with economic sizes and to introducing new technologies and new drugs; and

d. strengthening the indigenous capability for production of drugs.

Under the policy, government would keep a close watch on the prices of medicines which are taken out of price control, in case the prices of these medicines rise unreasonably. The government would also take appropriate measures, including revamping of price control under the said policy. It was also stated that National Drug Authority

84 Vijay Malik "Drugs and Cosmetics Act, 1940" at Supplement Page XXXIV (1994)
might be set up by a separate Act of Parliament which would perform various function to develop standards relating to the import, supply, manufacture promotion and use of drugs monitoring of clinical trials for the protection of human rights, quality of herbal medicines developing testing lab for cosmetics, diagnostic and devices.

Drugs, indeed, are essential for health of the society. Drugs have been declared as an essential commodity and accordingly, put under the Essential Commodities Act 1955. Only 74 out of 500 commonly used bulk drugs are kept under statutory price control. All formulations containing these bulk drugs either in a single or combination form fall under the price control category. However, the prices of other drugs can be regulated, if warranted in public interest.

To further regulate the prices of drugs, the Government of India issued The Drug Price Control Order, 1995 under Section 3

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85 http://www.medindia.net/buy (accessed on April 7, 2008).
86 Essential commodities Act, 1955 (10 of 1955) came into force on 1st April 1955 the Act provides for regulation and control of production, distribution and pricing of commodities, which are declared as essential for maintaining or increasing supplies or for security, their equitable distribution and availability at fair prices. The said Act contains total 16 sections. It was enacted to ensure easy availability of essential commodities to the consumers and to protect them from exploitation by unscrupulous traders. The list of commodities declared as “essential” is reviewed from time to time in the light of changes in the economic situation and particularly with regard to their production, demand, and supply. Further to amend the provisions of said Act, 1955 the parliament enacted the Essential Commodities (Amendment) Act, 2006 (No. 54 of 2006). The said Act received the assent of president on the 24th December, 2006 and it came into force and notified on 12th February, 2007. http://india.gov.in/sectors/consumers-affairs/essential_act.php. also see http://fcamin.nic.in/EC_Act_2006.pdf (accessed on August 11 2009)
87 Drug Price Control Order (DPCO) was first passed in 1970 and then revised in 1979, 1987 and 1995. The Drugs (Price Control) order, 1987 is repealed by the latest Drug (Price control) Order 1995. It was issued and came into force on 6 January 1995, the gazette of India-extraordinary Part-II-Sec 3 Subsec (ii) ministry of chemicals and Fertilizers Department of Chemicals and petrochemicals New Delhi, 6th January, 1995. It contains 27 orders and 3 Schedules
of the Essentials Commodities Act, 1955\textsuperscript{88} to regulate the prices of drugs. The Order interalia, provides the following things:-\textsuperscript{89}

\textbf{Order 3} confers powers on the government to fix the maximum sale prices of bulk drugs specified in the first Schedule.

1. The Government may with a view to regulate the equitable distribution and increasing supplies of a bulk drug specified in the first schedule and making it available at a fair price, from different manufacturers, after making such enquiry as it deems fit, fix from time to time, by notification in the official gazette, a maximum sale price at which such bulk drug shall be sold.

2. While fixing the maximum sale price of a bulk drug, the Government shall take into consideration a post tax return of fourteen percent on net worth or a return of twenty two percent on capital employed or in respect of a new plant an internal rate of return of twelve percent based on long term marginal costing depending upon the option for any of the specified rates of return that may be exercised by the manufacture of a bulk drug.

3. No person shall sell a bulk drug at a price exceeding the maximum sale price fixed under sub-paragraph (1) plus local taxes, if any.

\textbf{Order 7} deals with calculation of retail price of formulation of drugs by the government.

\textbf{Order 15} prescribes the manner in which retail price of a formulation is to be displaced. It says that every manufacturer, importer or distributor of a formulation intended for sale shall display in indelible print mark, on the label of container of the formulation and minimum pack thereof offered for retail sale....

\textbf{Order 16} talks about control of sale prices of bulk drugs and formulations and reads as that no person shall sell any bulk drug or formulation to any consumer at a price exceeding the price specified

\textsuperscript{88} Sec. 3 Essential Commodities Act, 1955 talks about Power to Control Production, supply, distribution etc. of the essential commodities. If the Central Government is of the opinion that it is necessary to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair price for regulating licencees, permits production manufacture controlling price.

in the current price list or price indicated on the label of the container or pack thereof, whichever is less plus all local taxes, if payable.

**Order 18** provides that sale of drugs would not be refused to a buyer by the manufacturer, distributor and dealer unless there is good and sufficient reason.

For the purpose of implementing provisions of the said order 1995, powers of the government have been vested in the **National Pharmaceutical Pricing Authority**.

The National Pharmaceutical Pricing Authority was established on 29th August 1997 as an independent body of experts following the Cabinet Committee’s decision in September 1994 while reviewing the Drug Policy. The Authority, interalia, has been entrusted with the task of fixation/revision of prices of pharmaceutical products (bulk drugs and formulations) enforcement of provisions of Drugs (prices control) order and monitoring the prices of controlled and decontrolled drugs in the country.\(^{90}\)

The introduction of product patent\(^{91}\) for pharmaceuticals especially in India, by an amendment to the **Patent Act, 1970**, in the year 1999 has far reaching implications on access to life saving drugs not only in India, but also in other underdeveloped countries dependent for life saving drugs on India.\(^{92}\)

The public health laws, national drug policy and the patent system are intensely inter related. This was stated by the then Prime Minister, **Late Mrs. Indira Gandhi**, who while speaking at the


\[^{91}\] A patent is a right granted by a government to inventors to exclude others from imitating, manufacturing, using or selling a patented process or product for commercial use for a specified period. In India, the national legal Regime pertaining to patents is contained in the Patents Act, 1970.

\[^{92}\] The Act is known as the Patents (Amendment) Act, 1999. It was further amended in 2002 and 2005 respectively alongwith the Patient Rules which have been framed and amended in 2003, 2005 and now called the Patents (Amendment) Rules 2006. In Sec.2 sub section 1 (ta) pharmaceutical substance means any new entity involving one or more incentive steps. The Patents (Amendment) Act 2005.
historic session of the World Health Assembly (WHA) in Geneva on May 16, 1981, emphasized, on the patent system and said,

"Idea of a better ordered world is one in which medical discoveries would be no profiteering from life or death".93

The Agreement on Trade related Aspects of Intellectual Property Rights (TRIPS) is a case in point94 TRIPS introduced the International Legal regime for patent protection for pharmaceutical products. The TRIPS granted time till 01 Jan 2005 to the developed countries to introduce patent protection for pharmaceuticals in its national legislation on patent in tune with the TRIPS agreement.95

India being a WTO member country is obliged to establish laws, which protect patent rights, allow patent on pharmaceuticals, and afford foreign and domestic patent applicants/holders equal right by 2005. This meant that India was to adopt product patent in the plan of process patent in respect of certain products. The Government of India by way of on ordinance passed in December 2004, recognized product patent for pharmaceutical and agrochemical products. This was presented as The Patent (third) Amendment Bill and was passed on 22 March 2005. In the background of stiff opposition against an increase in the cost of life saving drugs, on 22 March 2005, the Lok Sabha passed The Patent (Amendment) Act 2005. The Act facilitated the growth of pharmaceutical Industries. The Indian Pharmaceuticals sector which was almost non existent during 1970s, has come a long way by being

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93 supra n. 90, at.3.
94 The TRIPS agreement was signed in Marrakesh, Morocco by all 148 WTO member countries on 15 April, 1994 and came into force on January 1, 1995. It covers all types of intellectual property (IP) including patents, copyright and trademarks. TRIPS agreement is expected to have the greatest impact on the pharmaceutical sector and access to medicines. http://www.wto.org/english/tratop-e/trips-e/intel2.htm http://www.gsk.com/responsibility/WTO-andTRIPS-agreement.htm (accessed on August 6, 2009). also see www.danchurchaid.org/content/;/file/Access%20to%20seeds.pdf. (accessed on September 6, 2009)
a prominent provider of health care products, meeting almost 95% of country’s pharmaceutical needs. Now, the Indian Pharma Industry is valued at approximately $80 billion. From simple headache pills to sophisticated antibiotics and complex cardiac compounds, almost every medicine is now being made in India. Thus, India is the eleventh largest manufacturer of drugs and pharmaceuticals in the world. The pharma industry is now a net foreign exchange earner which has investment both by government as well as by private sector.

Development of drug resistance and research of newer and better drugs particularly developed by biotechnology and genetics means are responsible for greater demand on health front, and also need for developing new drugs to combat such problems. This calls for investment in research and development by pharma companies. The challenge to pharma research and to pharma industry lies in providing adequate medicines at affordable cost to Indian population and that too under the prevailing socio economic conditions.

The Indian Patent (Amendment) Act, 2005 seeks to complete India’s full scale compliance with its obligation to introduce product patents in health and food sectors as of 1st January 2005. The Act has the effect of invalidating section 5 of The Indian Patent Act, 1970 which granted only process patents for food, medicines and other drug substances. As a result, reverse engineering possibilities available to the Pharmaceutical industry will only be

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96 Ibid
98 Section 5 of the Patent Act 1970 contains the provisions of inventions where only methods or processes of manufacture patentable is given.
99 Reverse engineering is the general process of analyzing a technology specifically to ascertain how it was designed or how it operates. Reverse engineering as a method is not confined to any particular purpose but, often an important part of the scientific method and technological development. For example A chemical company may use reverse engineering to defeat a patent on a competitor’s manufacturing process. When a new machine comes to market, competing manufactures may buy one machine and disassemble it to learn how it was built and how it works.
limited to those drugs that are off patent. The Act also introduces Section 92 (A) on compulsory licensing. Patent on pharmaceutical products and processes provide drug companies with monoplies over the production and marketing of medicines, allowing them to fix prices at high rate to maximize profits.\textsuperscript{100}

The TRIPS agreement offers a patent protection for 20 yrs, after the expiry of which the generic drug manufacturers will get a right to manufacture the patented drug. The major concern raised about the product patent for pharmaceuticals is that it will not only give rise to higher pricing of drugs in India but also widen the gap between developed and developing countries. In November 2001 in Doha, Latar Doha Declaration was held on health. On TRIPS and public health, in the Declaration, ministers stressed that it is important to implement and interpret the TRIPS Agreement in a way that supports public health by promoting both access to existing medicines and the creation of new medicines. It emphasized on the issues concerning the implementation of present TRIPS agreements. It stated that the agreement should be interpreted in a way that supports governments' right to protect public health.

As far as a Doha agenda is concerned, this separate declaration set two specific tasks. The TRIPS Council has to find a solution to the problems, countries may face in making use of


Section 92 A of the Patent Act 2005 states as:-

(1) Compulsory licence shall be available for manufacture and export of patented pharmaceutical products to any country having insufficient or no manufacturing capacity in the pharmaceutical sector for the concerned product to address public health problems, provided compulsory licence has been granted by such country or such country has, by notification or otherwise, allowed importation of the patented pharmaceutical product to such country has, by notification or otherwise, allowed importation of the patented pharmaceutical products from India.

(2) The controller shall, on receipt of an application in the prescribed manner, grant a compulsory licence solely for manufacture and export of the concerned pharmaceutical product to such country under such terms and conditions as may be specified and published by him.....
compulsory licensing if they have too little or no pharmaceutical manufacturing capacity reporting to the General Council on this by the end of 2002.

The said declaration also extended the deadline for least developed countries to apply provisions on pharmaceuticals patents until 1 January 2016.\textsuperscript{101}

AIDS epidemic is considered to be one of the greatest challenges facing our generation which has become a global threat to human development. Everyday 8,500 HIV positive people die due to lack of access to treatment worldwide of the 40 million people living with HIV worldwide, 6 million people are in immediate need of anti-retroviral (ARV) treatment. More than 5 million people in India are living with HIV and 0.5 million of these need immediate treatment. The drugs available to reduce death rates due to HIV/AIDS are unaffordable by the poor patients. It is said that the high cost of drugs is due to the product patent protection introduced by the TRIPS agreement. India is, therefore, under an obligation to deal with a massive public health problem.\textsuperscript{102} In this area as it has to discharge its constitutional obligations to the people.

**Judicial Response**

In *Vincent Panikurlangara case*\textsuperscript{103} which arose out of a writ petition filed by the petitioner for withdrawal of 7000 fixed dose combinations and withdrawal of licenses of manufacturers engaged in manufacture of about 30 drugs, licensed by Drugs Control Authorities, the issue was not only relating to therapeutic value, harmful side effects of drugs but also involved the interests of patients who required drugs for treatment. The hon'ble apex court


\textsuperscript{102} Supra n. 95. at 88.

\textsuperscript{103} Supra note 32 at 995 (paras 13,18)
expressed the role of the State in dealing with new diseases and invention of new drugs. The court held in this context:

“The branch with which we are now dealing, namely health care of citizens, is a problem with various facets. There appears to be, as it were, a constant competition between nature (which can be said to be responsible for new ailments) on one side and human ingenuity engaged in research and finding out curative processes. This being the situation, the problem has an ever-shifting base. It is common place that what is considered to be the best medicine today for treatment of a particular disease becomes out of date and soon goes out of the market with the discovery or invention of new drugs. Again what is considered to be incurable at any given point of time becomes subjected to treatment and cure with new finds. There is yet another situation which must be taken note of as human knowledge expands and marches ahead. With the onward march of science and complexities of the living process hither to unknown diseases are noticed. To meet new challenges, new drugs have to be found. In this field, therefore change appears to be the rule”.

The Drug Controller General of India has revised the list of Schedule 'H' drugs under the **Drugs and Cosmetics Act 1940** after a decade. The drugs on Schedule 'H' can be sold by a pharmacist only against a prescription of a qualified medical practitioner. Announcing the move to update the list of prescription drugs, the Drug Controller General (India) issued a draft notification for bringing 100 molecules under schedule H. The molecules added to

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104 Ibid

105 Drug and Cosmetic Rules, 1945. Schedules to these Rules prescribe different drugs. For example Schedule K lists non-pharmacy drugs that can even be sold in a grocery. The third category is of non-prescription drugs. Any drug that is neither in schedule H nor in schedule ‘K’ is a non prescription drug that can be sold only by a chemist. Schedule H contains prescription of Drugs such as Alprazolam, Antibiotics, Analgin, Ciprofloxacin HCL Monohydrate Diclofenac, Ibuprofen, Norfloxacin etc. Schedule K contains drugs such as substances which are used both as articles of food as well as drugs like pure skimmed, condensed milk, ginger, pepper, cinnamon, cumin, substances intended to be used for destruction of insects, Asprin Tablets, Paracetamol Tablets, Analgesic Balms, Antacid, Preparations, inhalers, grip water for use of infants containing drugs for treatment of cold and nasal congestion syrups, pills and tablets for cough, skin ointment for burns cotton wool bandages, Tablets of Quinine sulphate, hair fixers. [http://cdso.nic.in/html/Drugs&cosmeticAct.pdf](http://cdso.nic.in/html/Drugs&cosmeticAct.pdf) (accessed on September 9, 2009)
the list included antibiotics anti-hypertension, anti-anginal, anti-cancer and anti-HIV drugs. The Drug Technical Advisory Board is of the view that the list should be revised from time to time as it was revised 10 years ago.106

In 2006 the Centre Government issued the deadline for drug manufacturers to reduce the MRP (Maximum retail price) of 886 drugs before it notifies the final prices.107 Recently prices in respect of 887 formulation packs are fixed/revised by Central Government on 3.8.2009. Now it is illegal to charge a customer more than the MRP printed on a packaged product. The Government is also thinking of strengthening the hands of the regulatory agency, the National Pharmaceutical Pricing Authority (NPPA), so to check annual price increases and price violations and penalize companies for charging unfair margins.108

It is submitted that government should keep a close watch on the price of medicines which are taken out of price control. In case, the prices of these medicines rise unreasonably, the Government should take appropriate measures, including reclaiming of price control.

(vii) The Prevention of Food Adulteration Act, 1954

Every day the newspapers are full of incidents involving death or hospitalization because of large scale adulteration in water, milk, spices, paneer, sweets and cooked food. To prevent adulteration of food The Prevention of Food Adulteration Act, 1954 was enacted which came into force on 1st January, 1955. The Act was amended by various amendments respectively in the years 1964, 1971, 1976, 1986, 1999 and the rules were last amended in 2008.109

106 The Tribune, June 11, 2005.
107 Times of India November 11, 2006.
109 The food safety and standards Act, 2006 and the prevention of food adulteration rules, 1955 have also been made. The amendment in the said rules is lastly made
The object of the Act is to prevent adulteration of food-stuffs and the manufacture, storage and sale of adulterated food-stuffs for human consumption. The Act was enacted to provide uniform legislation for all states for regulating the law so as to prevent adulteration of food stuffs, which affects the health of the people. Section-2 of the Act lays down the parameters of adulteration. Section 2(i) explains the “Adulterant” which means any material which is or could be employed for the purpose of adulteration. Section 2 (ia) explains the term “adulterated” which in brief, interalia, treats any article of food as adulterated if it contains any poisonous or other ingredient or substance which renders it injurious to health or if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities not within the prescribed limits of variability which renders it injurious to health. Section 2(v) explains ‘food’ which means any article used as food or drink for human consumption other than drugs and water and includes:

(a) any article which ordinarily enters into, or is used in the composition or preparation of human food,
(b) any flavouring matter or condiments, and
(c) any other article which the Central Government may, having regard to its use, nature, substance or quality, declare, by notification in the official Gazette, as food for the purpose of this Act.

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110 Sec. 2 of the said Act explains different terms of adulteration like adulterant adulterated, Laboratory or institute established under the Act for local areas local health authority, process of manufacture of an article of food misbranded article of food, packaging, the premises where article of food is placed or packed, sale of any article of food, Sample of any article of food respectively when the article is harmful to health or repugnant to human use.

111 See for details Sec. 2(a) of the prevention of food Adulteration Act, 1954. the act has total 83 sections
Under Section 9 of the PFA Act 1954, Food inspectors shall be appointed by the Central or State Governments. They have been conferred the powers for lifting samples of articles of food and sending them to public analyst for analysis. They are empowered to enter or inspect any place where any article of good is manufactured or stored for sale. The food inspector is also empowered to seize adulterated misbranded food and destroy food of perishable nature which is not fit for human consumption after giving written notice. The food inspector is also empowered to seize account books and other documents but is bound to return the same within a period not exceeding 30 days from the date of seizure after taking copies of the same or extracts therefrom.112 Section 11 lays down the procedure for taking sample for analysis by food inspectors, that food inspector is required to give a notice to the seller before taking the sample but not giving a notice is only an irregularity and will not vitiate the trial. Section 16 of the Act provides penalties for importers, manufacturers, sellers and distributors of articles of food, which is found to be adulterated or misbranded. These include imprisonment for a minimum period of six months, which may extend to three years and with fine not less than one thousand rupees.113

Section 18 of the said Act talks about the procedure to forfeit the article of food in respect of which contravention of the provisions of the Act is committed.114 The court is also empowered to impose

112 Id. section 10.
113 Id. section 16.
114 Id. Section 18 states that, "where any person have been convicted under this Act for the contravention of any of the provisions of this Act or of any rule thereunder, the article of food in respect of which the contravention has been committed may be forfeited to the Government:
Provided that where the court is satisfied that the article of food is capable of being made to conform to prescribed standards for human consumption after reprocessing, the court may order the article of food to be returned to the owner, on his executing a bond with or without sureties, for being sold, subject to the other provisions of the Act, after reprocessing under the supervision of such officer as may be specified therein."
enhanced penalties under section 21 of the Act upto a maximum imprisonment for six years.\textsuperscript{115}

The offence punishable under section 16 of the Act is cognizable and non-bailable. Although section 16A of the Act provides for summary procedure for trial of cases, all offences under sub-section (1) of Sec. 16 shall be tried in a summary way by a judicial Magistrate of first class specially empowered in this behalf by the State Government or by metropolitan magistrate. The Magistrate can pass a sentence of imprisonment not exceeding one year.

It is submitted that inordinate delays inbuilt in the judicial system of the country are responsible for ineffectiveness of the provisions of the Act. The machinery provided under the Act is grossly inadequate. Adequate number of inspectors should be appointment mainly in large town for lifting samples. Arrangements should be made to speedy testing process to ensure availability of reports from public analyst. Adequate number of separate fast track courts should be set up so as to enable them to bring the cases to a final decision at the earliest.

**Judicial Response**

In *Khem Chand v. State of Himachal Pradesh*\textsuperscript{116} the appellant was a milk vendor. The food inspector purchased a sample of milk and sent the same for analysis. The analyst found some deficiency in solids and non-fats and opined that it was adulterated. The main point argued before the courts below was that Rule 9(j) was not complied with. The trial court held that it was only directory and convicted the appellant. The appeal filed by him was allowed by

\textsuperscript{115} Section 21 of the said Act reads as “Not withstanding anything contained in Sec. 29 of criminal procedure code, 1973, it shall be lawful for any metropolitan magistrate or any judicial magistrate by the first class to pass any sentence authorized by this Act, except a sentence of imprisonment for life or for a term exceeding six years, in excess of his powers under the said section.”

session Judge. The state carried the matter by way of an appeal to the High Court. The High Court disposed of the appeal holding that the rule was directory. Finally, the matter went to the Supreme Court where it was held that the appellant was only a milk vendor and occurrence is said to have taken place in the year 1974. The sample of milk was declared to be adulterated on the sole ground that there was some deficiency in milk solids non-fats. The adulteration is of a minor nature. For these special reasons the court reduced the sentence of fine.117

In Ram Lal v. State of Rajasthan,118 case, appellant claimed that since the milk he sold was that of a she camel he cannot be prosecuted and convicted under the provisions of the Prevention Of Food Adulteration Act, 1954. The High Court, after holding that camel’s milk could not be sold for human consumption, further held that the milk sold was not shown to be camel’s milk at all. The High Court sentenced him to rigorous imprisonment for 6 months and to pay a fine of Rs. 1000/- under Sec. 16(1) of the Act. When the matter came before the Supreme Court, the court observed that the Food Inspector had purchased milk from the appellant. He took sample therewith on the spot. One part of the sample was sent to public analyst for examination. The report of the public analyst showed that the sample was examined and found to contain 25% of added water and that the milk fat was 4.1% and the milk solid non-fat was 6.74%. Hence, the appellant found to be guilty under section 16(1)(a)(i) of the Act. But in this case also, the Apex Court reduced the quantum of sentence as awarded by the High Court to imprisonment for 3 months and a fine of Rs. 500 on the ground that it was too old a case now.119

117 Id at 227.
118 AIR 2001 SC 47. The verdict was delivered by Justice K.T. Thomas and Justice R.P. Sethi. See also State of U.P. v Hanif. AIR 1992 SC 1121.
119 Id at 50 (paras 15, 18).
Legal Protection to the Persons with Disabilities at the National Level.

The Constitution of India contains provisions in the form of directives to the states for the protection and empowerment of the disabled. Being a founder member of the United Nations, India has ratified various conventions for the protection of the rights of the people. The adoption of declaration at the international level had a tremendous impact on the Indian legislature. The government for the first time in 1987 has made an effort in this direction by enacting the Mental Health Act.

(viii) Mental Health Act, 1987

Mental well being is an essential component of the total health of individuals, mental health problems are a global phenomenon. Among prisoners, they account for nearly 70 per cent of the illnesses. Before independence, there were no clear strategies for the care of the mentally ill. The approach was largely to build asylums which were centres for custodial care rather than therapeutic centres. At the time of independence, there was one mental hospital bed for about 40,000 population. The Bhore committee\(^{120}\) and the Mudaliar committee\(^{121}\) made various recommendations to improve...

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\(^{120}\) The Bhore Committee was constituted in 1946 under the Chairmanship of Sir Joseph Bhore. The committee was set up by the Government of India to investigate and recommend improvements to the Indian Public Health System. The committee was instrumental in bringing about the public health reforms related to peripheral health centres in India. It was guided by lofty principals as “nobody should be denied access to health services for his inability to pay” and that the focus should be on rural areas. [http://en.wikipedia.org/wiki/Bhore-Committee](http://en.wikipedia.org/wiki/Bhore-Committee) [http://www.ispub.com/ostia/index.php?xmlfile_path=journals/kjh/vol7ni_bhore.xml](http://www.ispub.com/ostia/index.php?xmlfile_path=journals/kjh/vol7ni_bhore.xml). (accessed on August 5, 2009).

\(^{121}\) Mudaliar committee was setup in 1962. This committee was headed by Dr. A.R. Mudaliar. The committee was set up to review the developments in Public Health and Medical Care that had taken place demographic aspects of rural health policy in India. It concentrated on medical education and development of training infrastructure for static medical units. The committee found the conditions in PHCs to be unsatisfactory and suggested that the PHC, already established should be strengthened. The committee has recommended to recruit paramedical personnel for multipurpose instead of individual diseases such as BCG, leprosy, malaria and also recommend integration of medical and health services. P.T.O
the mental health service facilities. The decade of the 70s was marked by active thinking in the area of mental health. Shrivastav committee\textsuperscript{122} in 1974, recommended that one hour out of the total training of 200 hours of the community health workers be devoted to mental health and also a separate manual be prepared for them regarding the recognition and management of mental health emergencies and problems. But no concerted efforts were made before the decade of the 80s to promote policies and programmes in relation to mental health. The National Mental Health Programme of the Government of India 1982 was the outcome of the various initiatives taken to provide mental health care through different methods.\textsuperscript{123}

Consequently, The Mental Health Act was passed by the Parliament in 1987, which came into force with effect from 1993.\textsuperscript{124} The Act is very elaborate and exhaustive and contains 98 sections covered in 10 chapters. Section 2(l) of the Act defines “the Mentally ill person” which means a person who is in need of treatment by reason of any mental disorder other than mental retardation. Sections 3 and 4, provides for creation of Mental Health Authorities, by the Central Government and State Governments Sections 5 to 14, deals with the establishment maintenance, inspection and regulation...
of psychiatric hospital and nursing homes which are established only with licence. 126

Sections 15 to 36 cover the rules governing admission and detention of patients in psychiatric hospital or nursing homes. Chapter 8 of the Act in the form of section 81 provides for protection of human rights of mentally ill persons,125 and whereby mentally ill persons cannot be subjected during treatment to any indignity both physical or mental or cruelty and can not be used for purposes of research unless such research is of direct benefit to him. However, the section fails to encapsulate several internationally accepted basic rights that must be conferred on mentally ill persons.126

Judicial Response

It may be apposite to consider whether or not institutionalized mental health care and treatment can be provided in the absence of legislative intervention. There would also be few instances when a person with mental disorder may turn socially disruptive violent or dangerous by reasons of his condition. In that situation the afflicted person may have to be institutionalized compulsorily. Such

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125 Section 81 of the said Act of 1987 states that:-
(1) No mentally ill person shall be subjected during treatment to any indignity (whether physical or mental) or cruelty.
(2) No mentally ill person under treatment shall be used for purposes of research unless –
(i) such research is of direct benefit to him for purposes of diagnosis or treatment; or
(ii) Such person, being a voluntary patient has given his consent in writing or where such person (whether or not a voluntary patient) is incompetent, by reason of minority or otherwise, to give valid consent, the guardian or other person competent to give consent on his behalf, has given his consent in writing, for such research.
(3) Subject to any rules made in this behalf under section 94 for the purpose of preventing vexatious or defamatory communications or communications prejudicial to the treatment of mentally ill person, no letters or other communications sent by or to a mentally ill persons under treatment shall be intercepted, detained or destroyed.

126 The relevant international norms can be found in the UN principles of 1991 that were adopted by the General Assembly by Resolution 46/119. They are mere norms they cannot be directly imported as a domestic law. A/RES/46/119 The protection of person with mental illness and the improvement of mental health care. http://www.un.org/dcouments/ ga/res/46/a46r.119.htm (accessed on August 12, 2009).
compulsory and involuntary institutionalisation is a deprivation of his/her liberty. By the terms of Article 21 of the Indian constitution, this deprivation can not take place except by a legislatively provided procedure. Legislative intervention thus becomes a constitutional necessity. In India there is sufficient case law on the issue of mental health in the state run institutions. Few important cases in this contest are given below:

In *Sheela Barse v Union of India and others*, the Supreme Court issued various directions in regard to physically and mentally retarded children as also abandoned or destitute who are lodged in various jails in the country for “safe custody”.

In another case *Miss Veena Sethi v State of Bihar*, in the instant case, some prisoners were detained in prison for the period ranging from 37 years to 19 years. They were arrested in connection with certain offences and were declared insane at the time of their trial and were put in Central Jail (Hazaribagh, State of Bihar) with directions to submit half-yearly medical reports. Some were convicted, some acquitted and trials were pending against some of them. While they were declared sane, no action for their release was taken by the authorities for years to come. The apex court held that in these circumstances prisoners remained in jail for no fault of theirs but because of the callous and lethargic attitude of authorities. The Supreme Court issued the notice to the State of Bihar for the purpose of ascertaining the facts in regard to these prisoners. While delivering the judgement Justice P.N. Bhagwati stated:

"...We cannot in the circumstances order their release, because having regard to the mental condition of these prisoners, it would not be in the interest of the society as also in their own interest to set them free, if released, in the present...

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127 AIR 1986 SC 1773 (Para 10) at 1777. The former Chief Justice P.N. Bhagwati alongwith Justice Ranganath Misra delivered this judgement.

128 AIR 1983 SC 339. The Division Bench comprised of P.N. Bhagwati and D.A. Desai J.J.
condition they would not even be able to look after themselves. It is indeed unfortunate that most of these prisoners have been in jail for over 25 years and it is a matter of shame for the society that these prisoners have had to be detained in jail because there are not adequate institutions for treatment of the mentally sick.\footnote{129}

The court further directed the State Government that there must be an adequate number of institutions for looking after the mentally sick and the practice of sending lunatics or persons of unsound mind to the jail is not at all a healthy or desirable practice.\footnote{130}

Again, in \textit{Sheela Barse v Union of India and Another}\footnote{131} where many children and adults were committed in Calcutta Jail as lunatics, came before the Supreme Court for consideration through public interest litigation. In fact they were not mentally ill at all. Once they were jailed, they were all categorised as "Non Criminal Lunatics". When these persons were produced before the judicial or executive magistrate of West Bengal an instant assessment was made of their mental health as they were committed to jail without fixing the case, date of hearing or the duration of detention. Thereafter, they were never produced before the magistrate. During their confinement these persons lost all the contacts with the outside world. There were no health facilities inside the jail. Their conditions were miserable. The court appointed the commission, and it was stated in the report that mentally ill person who was admitted in jail was not a criminal lunatic. No psychiatrist was on the permanent staff of any jail, there was absence of mental health team, lack of supervision, lack of care, lack of variety or treatment facilities.
necessary for mental health care\textsuperscript{132}. In light of these conditions the court issued following directions so to treat these unfortunate persons on a humanitarian spirit\textsuperscript{133}

1) that admission of non criminal mentally ill persons to jails is illegal and unconstitutional;
2) it was directed that admission of mentally ill persons to jails in West Bengal on any ground whatsoever be stopped forthwith and further the state is directed to issue instructions to this effect immediately;
3) it was directed that the function of getting mentally ill persons examined and sent to places of safe custody hitherto performed only by judicial magistrates;
4) the Judicial Magistrate will, upon a mentally ill person being produced have him or her examined by a mental health professional/psychiatrist and if advised by such MHP/Psychiatrist send to the mentally ill person to the nearest place of treatment and care;
5) The Judicial Magistrate will send reports every quarter to the High Court setting out the number of cases of persons sought to be screened and sent to places of safe custody and action taken by the Judicial Magistrate thereon;
6) the Government of West Bengal is also directed to
   i. take immediate action and issue instructions in the implementation of the directions given herein above.
   ii. take simultaneous immediate steps for
       (a) immediate upgradation of mental hospitals
       (b) setting up of psychiatric services in all teaching and district hospitals, filling up the posts of psychiatrists in these places.
       (c) integrating mental health care with the primary health care system.
   iii. Regulate the procedure from admission to discharge from mental hospitals in West Bengal of mentally ill person by a fresh set of instructions in accordance with recommendations made in the report of commissioners.
   iv. The Health Secretary of the state of West Bengal will send quarterly report to this court on the steps taken to implement each of the directions given in this order. This will be in the form of affidavit.
7) The High Court of judicature at Calcutta is requested to a point a committee comprising a mental health professional/psychiatrist, a social worker and a Law person to evaluate the state of the existing mentally ill in jails. The committee will in a report make

\textsuperscript{132} Id at 205
\textsuperscript{133} Id at 211-213.
recommendations to discharge such of those persons found fit and ensure them return to their homes/or their rehabilitation. The report will be submitted within two months of its appointment by the committee to the High Court with a copy of the court.

The case of **In Re: Death of 25 Chained inmates in Asylum Fire in T.N.**,\(^{134}\) involved the death of 25 inmates of a mental health institution in Ervadi, Ramanathapuram District Tamil Nadu who were chained to poles or beds, and hence, could not escape from a 'fire' that broke out. The Supreme Court took suo motu action on the basis of the submission note of the Registrar (Judicial) to a news item published in all leading dailies and directed the State to implement the provisions of the Mental Health Act, 1987 as well as undertake a districtwise survey of all registered unregistered institutions that provide mental health facilities and ensure that they are maintaining standards of care. The court also stated that

> “it appears that there is slackness on the part of the concerned authorities to implement the laws enacted by the Parliament.”\(^{135}\)

Earlier in **Chandan Kumar Banik v State of West Bengal**,\(^{136}\) the Hon’ble Supreme Court rescued the mentally challenged inmates of a mental hospital in Hooghli District who were kept in chains by the hospital authorities. The Court observed that the hospital has been left in charge of a sub-divisional officer as its Administrator. It is more so in the case of a mental hospital. Whereas there must be someone at the head of the management of an institution of this type with flowing human love and affection, understanding and consideration for mentally ill people. The Sub-

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\(^{134}\) AIR 2002 SC 979, The Bench comprised of Justices M.B. Shah, B.N. Agarwal and Anjit Pasayat J.J.

\(^{135}\) Ibid (para 6)

\(^{136}\) 1996 Supp(4) SCC 505. Justice Ranganath Misra, Justice P.B. Sawant and Justice K. Ramaswamy were the judges who delivered this judgement.
Divisional officer is not the person suitable to deal with the mentally ill patients even remotely. The court directed the State Government to immediately think of placing the administration of the hospital in charge of a competent doctor with requisite administrative ability and power.\textsuperscript{137}

It is submitted, law should not discourage persons from seeking mental health treatment, rather it should perform a promotive and facilitative role. The judicial decision on past mental illness and treatment could discourage persons with mental illness from seeking succour. It is, therefore, suggested that an express legislative provision should be incorporated which states that a past history of mental illness will be no bar to marriage; failure to disclose such past history or the fact of treatment would not amount to suppression of a material fact.

Moreover, it is pertinent to mention here that section 81 (1) of the Indian Act though is in line with principle 12 of the UN Principles, 1991 that requires the mentally ill person to be treated with humanity and with respect for inherent human dignity, yet, it is couched in extremely broad terms and gives little indication of the exact nature of cruelty or indignity that it seeks to prevent.\textsuperscript{138}

Another crucial right encapsulated in the UN Principles and left out by the Indian legislation is the manner of treatment. While it may be argued that the manner of treatment is purely a medical technicality, it must be kept in mind that the execution of the treatment can affect several other rights of the patient. Principle 1.1 makes the best available treatment the rights of a mentally ill

\textsuperscript{137} Id at 506 (para 5)
\textsuperscript{138} The UN principles go on to provide much broader framework of human rights. Principle 1.3 confers the right to protection against all forms of exploitation including economic and sexual exploitation. It also protect against all abuse and degrading treatment.
The Indian law is completely lacking in this regard and provides no remedy if such treatment is refused.

Another basic right that is ignored by the Indian legislation is the right to live and work in community. This right is covered by principle 3 of the UN principles. Such a right is absolutely essential to ensure rehabilitation of the patient and prevent long term discrimination Principle 7.3 requires that a mentally ill person be given treatment that is relevant to his or her cultural background. This right becomes particularly relevant to the Indian context where several communities and religions have beliefs that may be offended by certain forms of treatment. Mental treatment itself is considered taboo till date and most families are hesitant to submit their relations even to mental examination. In such background, a form of treatment that goes against religious or social customs may lead to a dangerous situation where family members point blank refuse to allow the patient to undergo the much needed treatment. In order to avoid such situations, the law must mandate the officials in charge of the treatment to accommodate as far as possible, the peculiar beliefs and traditions of communities.

UN principles contains a savings clause under principles 25. This makes it clear that there will be no restriction or derogation from any existing rights of patients, including rights recognized in international and domestic law on the pretext that they are not recognized in the UN principles or are recognised to a lesser extent in the UN principle. It is submitted that a similar clause could be included in the Indian law that saves the existing rights of patients, including rights recognised in international and domestic law.

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139 The lawyers Collective at 17 (November 2006).
140 Ibid.
141 Id, at 18.
Therefore, the above suggested changes are the need of the hour to the present Mental Health Laws, and only then mentally ill person’s dignity can be maintained. According to WHO 30% of the population suffer with mental illness all over the world. National Prevalence rate of all mental disorders is 73 per 1000 population.\(^{143}\) Whereas according to a recent multicentre study, nearly 15 million Indians are afflicted with serious psychiatric illnesses and another 30 to 50 million suffer from mild-to-moderate psychiatric problems. These problems are expected to increase considerably in the years to come. Hence, for promoting mental health, certain aspects of state mental health rules like licensing fee, lack of provisions for terms and conditions for appointments of inspectors and visitors committee and criteria for maintaining a psychiatric nursing home should be amended for effective implementation of the licensing process.

It is also relevant to mention that the task of revising the *State Mental Health Rules* was given to Mental Hospital Code Revision Cell. And a cell has been formed with director. This Cell submitted the revised mental hospital code incorporating the provisions of the Act of 1987, recommendations of National Human Rights Commission and modern concept of Mental Health. The Government of India is making National Mental Health Programme as well as District Mental Health Programme to provide mental health services in rural areas also.\(^{144}\) The objective of the National Mental Health Programme is to

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\(^{144}\) Employment News, 9-15 Oct, 2004. As a result, The District Mental Health Programme was launched in 1996-97 in four Districts. One each in Andhra Pradesh, Assam, Rajasthan and Tamil Nadu. The training to the trainers at the State level is being provided regularly by National Institute of Mental Health and Neuro Sciences, Bangalore under the National Mental Health Programme. The District Mental Health Programme was extended to seven Districts in 1997-1998, five districts in 1998, and six Districts 1999-2000. Thus, this programme is under
ensure availability and accessibility of minimum mental health care for all in the foreseeable future, particularly to the most vulnerable and underprivileged sections of population remains largely unfulfilled.

India, being one of the pioneer countries in health services planning with a focus on primary health care mental health as part of the general health services carries no separate budget. The National Mental Health Programme serves practically as the mental health policy. During the 11th five year plan (2007-2012) an allocation of Rs.1000 crore has been made for the National Mental Health Programme. It has been proposed to decentralize the programme and synochronize with National Rural Health Mission for optimizing the results. The Ministry of Health, Government of India, envisages extention of District Mental Health Program to all districts in the country. Although India is well placed as far as trained manpower in general health services is concerned, yet the mental health trained personnel are quite limited and these are mostly based in urban areas. A number of non-governmental organization have also initiated activities related to rehabilitation programmes, human rights of mentally ill people, and school mental health programmes. Despite all these efforts and progress, a lot has still to be done towards all aspects of mental health care in India. It is necessary on the part of public health also to conduct research in bringing out the epidemiological basis for such programmes.


Keeping in mind, human rights of disabled population the Parliament also enacted legislation in the year 1995 known as **The Persons with Disabilities (Equal Opportunities, Protection of Rights and full Participation) Act, 1995**. It came into force on Feb. 7, 1996.147

Disability as applied to humans refers to any condition that impedes the completion of daily tasks using traditional methods.

The said Act, 1995, defines 'Disability as'148: -

"Disability Means –

(i) blindness;  
(ii) low vision;  
(iii) leprosy;  
(iv) hearing impairment;  
(v) locomotors disability;  
(vi) mental retardation;  
(vii) mental illness;

The concept of disability varies from society to society. During the last 20 years persons with disabilities have, through their own organizations, strived to make their voices heard in many countries by advocating for their rights and ensuring that disability issues become a priority and part of the disability agenda.

Between 5 and 10 % of Indians have some impairment or disabling conditions,149 and a staggering 90 million people in India are disabled. As per the National Sample Survey Organization (NSSO) survey conducted during Census 2001, it was found that in almost one in every ten is disabled. A total of 1.34 lakh new cases were detected during the year 2008-09. Number of disability cases

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147 The Act contains 74 sections. The Persons with Disabilities (Equal Opportunities Protection of Rights and full Participation) Rules, 1996 has also been enacted the rules contains the provisions relating to guidelines for evaluation and assessment of various disabilities, the central coordination committee, executive committee, employment, procedure followed by Chief Commissioner.

148 Section 2(i), The Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation), Act, 1995.

149 D:/GPE/hst/country Profiles/INDIA.doc. (accessed on April 7, 2008).
detected increased from 3477 (2.53%) in 2007-08 to 3763 (2.80%) in 2008-09.\textsuperscript{150}

Section 25 of the said Act 1995 provides for prevention and early detection of Disabilities. The appropriate governments and local authorities is given power to take certain steps for prevention and occurrence of disabilities.\textsuperscript{151} The appropriate Government shall undertake surveys, investigation and research concerning the cause of disabilities, can promote methods of preventing, sponsor awareness campaigns, take measures for the care of mother and child, create awareness through television radio and mass media on the causes of disabilities and the prevention measures to be adopted.

Section 42 of the above Act makes the provision that appropriate Governments shall by notification may launch schemes to provide aids and appliances to persons with disabilities.

Sections 51 to 56 of the said Act provides for recognition of institutions for persons with disabilities and also establishment of institutions for persons with severe disabilities.\textsuperscript{152}

\textsuperscript{150} http://nlep.nic.in/progress\%20report\%2031st\%20march\%202008-09.doc (accessed on July 17, 2009).

\textsuperscript{151} Supra note 147. Section 25 of the said act reads as, "within the limits of their economic capacity and development, the appropriate Governments and the local authorities, with a view to preventing the occurrence of disabilities, shall –

(a) undertake or cause to be undertaken surveys, investigation and research concerning the cause of occurrence of disabilities;
(b) promote various methods of preventing disabilities;
(c) screen all the children at least once in a year for the purpose of identifying "at-risk" cases;
(d) provide facilities for training to the staff at the primary health centres;
(e) sponsor or cause to be sponsored awareness campaigns and disseminate or cause to be disseminated information for general hygiene, health and sanitation;
(f) take measures for pre-natal, pre-natal and post-natal care of mother and child;
(g) educate the public through the pre-schools, schools, primary health centres, village level workers and anganwadi workers;
(h) create awareness amongst the masses through television, radio and other mass media on the causes of disabilities and the preventive measures to be adopted.

\textsuperscript{152} Id. Sec. 56 of the said Act says that “Person with severe disability” means a person with eighty percent, or more of one or more disabilities.
Sections 66 to 68 of the Act contains the provisions for social security including rehabilitation measures (insurance scheme and unemployment allowance etc.). In brief:

> The Act has several provision to ensure equal opportunities, protection of rights and full participation of disabled people in mainstream activities of the society.\textsuperscript{153}

> The Act also declares that the State shall progressively ensure that every child with disability has access to free education until the age of 18 years.\textsuperscript{154}

> The highlight of the Act is that it gives statutory recognition to the policy of three percent reservation in all group ‘C and D’ posts, and has also extended the reservation to group ‘A’ and ‘B’ Posts also.

There is little doubt that the new Act will help to develop positive action programmes as well as offer guidelines to make policies in favour of disabled people. The Act is designed to eliminate discrimination and create an equal society. It encourages greater involvement of disabled people in world around them so that they may themselves contribute to improving the quality of their lives.

**Judicial Response**

Before the enactment of the above said Act 1995, one gets to see a very feeble response of Indian judiciary regarding the human rights of the persons with disabilities. But, still one can find that judiciary was influenced by the shift to a right-based perspective on disabilities in this regard, in the case of *D.N. Chanchala v State of Mysore*.\textsuperscript{155} Though, this case involved the issue of reservation of seats for various categories of persons and classification on University basis under Article 14 and 15(4) of the Constitution of

\textsuperscript{153} Id sections 25, 26, 27, 30, 32, 33, 39, 42, 44, 48, 66.

\textsuperscript{154} Id. Section 26A.

\textsuperscript{155} AIR 1971 SC 1762. In this case, The Judgement was delivered by the Hon’ble Justice M. Shelat, alongwith Justices I.D. Dua and V. Bhargava.
India, yet Shelat J. while delivering the judgement observed in Para 43 that:

".....But an equally fair and equitable principle would also be that which secures admission in a just proportion to those who are handicapped and who, but for the preferential treatment given to them, would not stand a chance against those who are not so handicapped and are, therefore, in a superior position. The principle underlying Article 15(4) is that a preferential treatment can validly be given because the socially and educationally backward classes need it, so that in course of time they stand in equal position with the more advanced sections of the society. It would not in any way be improper if that principle were also to be applied to those who are handicapped but do not fall under Article 15(4)....."156,

And in this way, the Supreme Court tried to extend the equitable principle of preferential treatment under Article 15(4) to the persons with disability to bring them in the mainstream by giving them equal opportunity in the field of education.

In the year 1995, the Hon'ble Supreme Court in Consumer Education and Research Union of India157 case held that:-

"The constitutional concern of social justice as an elastic continuous process is to accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor, etc. are languishing and to secure dignity of their person. The constitution, therefore, mandates the State to accord justice to all members of the society in all facets of human activity."

Since the enactment of the Disability Act 1995, the Courts have been construing the Act in a beneficial manner and several landmark judgements on the issue of disability have been rendered. The mandate of section 47 of the Act has been adequately expressed

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156 Id, at 1775.
157 AIR 1995 SC 922 (Para 21) The Bench comprised of the former Chief Justices A.M. Ahmadi, along with Madan Mohan Punchhi and K. Ramaswamy J.J. For facts see Supra note 11.
by the Hon’ble Supreme Court in the judgement of *Kunal Singh v Union of India*.158

“It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of section 47 clearly indicate its mandatory nature. The section 47 says, “no establishment shall dispense with, or reduce in rank, an employee who after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits: provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation. The view that advances the object of the Act and serves its purpose must be preferred to one which obstructs the object and paralyses the purpose of the Act:”

**In Javed Abidi v U.O.I.,**159 one of the grievance of the petitioner was that there was lack of facilities like providing aisle chair and ambulift by the Indian Airlines. The petitioner contended that it was a social obligation of the Airlines to provide these minimum facilities so to permit easy access to the disabled persons, particularly those who are orthopaedically impaired and suffer from locomotor disability. Indian Airlines in course of the hearing of the

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158 (2003) 4 SCC 524, (para 9) at 529 The Division Bench consisted of Justice Shivraj V. Patil and Justice H.K. Sema. The appellant was a constable in the special service Bureau. When he was on duty, he suffered an injury in his left leg which led to imputation of his leg. The Medical Boards in report declared him to be permanently incapacitated for service. Therefore, his services were terminated. He filed a writ petition in the High Court challenging the termination order and claiming that he should have been assigned with alternative duty which he could discharge keeping in view the extent of his disability. The High Court dismissed the petition. Therefore, he filed the instant appeal.

159 AIR 1999 SC 512. (Para 2) at 514 Justice K. Venkataswami and Justice G.B. Pattanaik comprised the bench.
writ petition indicated that the major airports are going to be provided with ambulift and aisle chairs in our crafts to be used by disabled persons.

Another major grievance raised by the petitioner was that the Indian Airlines was not giving any concession to such disabled persons for their movement by air even though such concessions are being given to blind persons, who are also ‘disabled persons’ under the Act. The court speaking through Justice Pattanaik held that:

“......It is appropriate to direct that those suffering from the aforesaid locomotor disability to the extent of 80% and above would be entitled to the concession from the Indian Airlines for travelling by Air within the country at the same rates as has been given to those suffering from blindness on their furnishing the necessary certificate from Chief District Medical Officer to the effect that the person concerned is suffering the disability to the extent of 80%. Such District Medical Officer wherein the disabled ordinarily reside will constitute a Board with Specialist in Orthopaedic and one other Specialist whom he think suitable for the purpose and examine the person and would grant necessary certificate for that purpose......”

In National Federation of Blinds UP Branch v. State of U.P., referring to Section 43 of The Persons With Disabilities (Equal opportunities, Protection of Rights and Full participation) Act, 1995, which provides for scheme for preferential allotment of land for certain purpose, the Allahabad High Court ordered the respondent not only to give preference in the matter of allotment of land and houses to handicapped persons, but also to provide concessional rates to handicapped persons.

While pronouncing the judgement, the Hon’ble Court defined rehabilitation as:

160 Id at 515 (para 4).
161 AIR 2000 All 258. (Lucknow Bench) Justice S.H.A. Raza and Justice R.D. Mathur were the judges who delivered the judgement.
162 Id, at 263 Para 25. Recently the Punjab and Haryana High Court also extended the helping hand to disabled by asking the Chairman of Chandigarh Housing Board to take a decision within six months on allotment of land and residence to the disabled.
“Rehabilitation means the restoration of the disabled to the fullest physical, mental, social, vocational and economic usefulness of which person is capable. In other words, rehabilitation is a goal-oriented programme which aims at enabling an impaired person to reach an optimum mental or social function level, which follows basically three aspects. Physical Rehabilitation Vocational Rehabilitation and Psycho-social integration of the disabled.”

The said law though recognizes the importance of consultation with disabled people on issues, which directly or indirectly affect them, yet it treats ‘disability’ as civil rights rather than a health and welfare issue. It is submitted that disability of the internal organs should also be included in the term ‘disability’ like disability of the kidney, lungs, heart or other persons who have only one lung or one kidney or other, persons who have serious functional disorders by heart by birth. Need is to broaden the scope of the definition of ‘disability’. Further the existing absence of time line or deadlines in the Act for authorities concerned to comply with the provisions of the Act needs to be regulated.\textsuperscript{163} For instance, Section 44 of the Act provides for the special measures to be taken by the establishments in the transport sector, within the limits of their economic capacity and development for the benefit of persons with disability. As a result the concerned authorities have yet to take measures to ensure the implementation of the provision for “accessibility,” as the authorities are taking an advantage of the term “within the limits of their economic capacity”, and have been using this as a defence to negate the right granted by statute.\textsuperscript{164} Further, under the Act, the Chief Commissioners and Commissioners for persons with Disabilities are envisaged to be the watchdog bodies with the powers of a civil court.

\textsuperscript{163} persons on concessional rates. ‘HC extends helping hand to city’s disabled’. The Times of Chandigarh, August 7, 2009.
\textsuperscript{164} http://www.ebc-india.com/lawyer/articles/847.htm (accessed on July 16, 2009).
However, very few facilities have been provided to these offices and they thus remain ineffective. Though rules to further streamline the provision of the disability Act 1995 have been framed in the year 1996.\footnote{Note 165}

In the light of all this, it is right time for Ministry Of Social Justice and Empowerment to go full throttle and prepare time line for implementation of key deliverables with departmental accountability. These are the reasons why India is lagging behind in the international arena from the country like the US.\footnote{Note 166}

In brief, the human rights perspective on disability is now to create barrier free environment for persons with disability and to integrate persons with disabilities into the social mainstream which would consequently contribute to their right to health.

\textbf{(x) The National Trust for Welfare of Persons With Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999} is also an important enactment.\footnote{Note 167} The National Trust supports programmes which promote independence, facilitate guardianship where necessary, and address the concerns of those special persons who do not have their family support. The Trust also seeks to strengthen families and protect the interest of persons with autism, cerebral palsy mental retardation and multiple disabilities after death of their parents. The Trust is empowered to receive grants, donations, benefactions bequests and transfers.\footnote{Note 168} Under this trust, screening of the suspected disabled children/people through the District Medical Board and issuance of photo identity cards to

\begin{itemize}
  \item The Person with Disabilities ((Equal Opportunities, protection of rights and full participation) Rules 1996. It contains 45 rules. Sec. 57 of the Act 1995 and Rule 42 of the 1996 Rules contains the provision of appointment of Chief Commissioners and procedure to be followed by Chief Commissioner for persons with disabilities.
  \item supra note 164.
  \item In short it is known as the National Trust Act. The said Act contains 36 sections and the Central Government has also made the rules 2000 for the National Trust Act 1999. (These Rules are 25 in number )
  \item http://www.socialjustice.nic.in/disabled/rehab.htm (accessed on July 16, 2009)
\end{itemize}
eligible disabled children has been done. It also helps through granting of stipend to economically backward disabled children free distribution to aid and appliances to disabled people disbursement of old age pension to eligible old age disabled persons with sympathetic attitude.169

(xi) Anti Smoking Laws

It is now established beyond any doubt that the use of tobacco in both smoking and non-smoking forms is extremely dangerous for health. In recent years, awareness about the evil effects of smoking has considerably increased. Now a days, efforts are being made to save even non smokers from involuntary exposure to tobacco-smoke. Smoking is a bad habit which finally leads to various grave health problems to those who become addicted to it.

Tobacco acts like a slow poison. In any form of it causes damage to different organs over a period of time, which manifests after several years.170 The forms in which tobacco is used presently, are, (a) cigars, (b) cigarettes (c) bidies, (d) pipes, (e) tobacco chewing, (f) tobacco eating and (g) licking and snuff taking.

Tobacco is the most important preventable cause of death and disease among adults. The WHO estimates that worldwide 5 million deaths are caused prematurely by smoking every year. The number is expected to increase to 10 million by 2020, most of the increase taking place in developing countries. A total of 100 million lives were lost due to smoking in the 20th century and if the current trends continue about a billion would occur due to smoking in 21st century. In India, smoking expected to kill 10 Lakh people annually from

170 From historical point of view, in seventeenth century, the tobacco was brought in this country by Portuguese from America. Tobacco in India is known from 1605 and its cultivation began in 1610 in Ceylon. Like tobacco plant in India also came from America and Tobacco smoking became common with the introduction of the plant. http://www.bbc.co.uk/worldservice/scitech/features/healthtobaccotrial/India.htm (accessed on June 23, 2008)
2010 nearly 70% of these are young people\textsuperscript{171}. Estimates from the National Family Health Survey 3 (2005-06) indicated an increasing prevalence of Tobacco Consumption in India, with 57% males and 10.9% females reportedly consuming Tobacco in some form.

To curb it, a significant development took place in the form of the Convention on Tobacco Control (FCTC), the first international treaty which was proposed by the WHO that after four year negotiations. This comprehensive treaty was finally approved by the member countries of the World Health Assembly in 2004. The treaty came into force from February 27, 2005, and so far it has been signed by 168 countries and ratified by 124, making it an effective public health tool for global tobacco control\textsuperscript{172}.

To check this menace, the Indian Parliament enacted \textbf{The Cigarettes And Other Tobacco Products (Prohibition Of Advertisement And Regulation Of Trade And Commerce, Production. Supply And Distribution) Act, 2003}\textsuperscript{173}.

The Act 2003 defines 'smoking' and also bans it in public places.\textsuperscript{174} India took a leading role in the development of the FCTC

\textsuperscript{171} K S. Reddy, P.C, Gupta Report on tobacco control in India New Delhi: Ministry of Health and Family Welfare, Govt. of India, 2004. Over 11 million women country wide use Tobacco in different forms and women smokers die an average 8 years before their non smoking counterparts. Where as around 22.9 crore men consume Tobacco and more than 14% school going children have taken to smoking. ‘A yr on, smoking ban just on paper’ The Times of India, October 2, 2009.

\textsuperscript{172} www.fctc.org (accessed on June 15, 2007).

\textsuperscript{173} This Act was in the light of May 17, 1990 Resolution of the 43\textsuperscript{rd} World Health Assembly meeting which urged the member states to enact law and take effective measures for protecting their citizens with special attention to risk groups such as pregnant women and children from involuntary exposure to tobacco smoke, discourage the use of tobacco and impose progressive restrictions and take concerted action to eventually eliminate all direct and indirect advertising promotion and sponsorship concerning tobacco.

\textsuperscript{174} Section 3(n) of the Act 2003 defines “smoking”. Smoking means smoking of tobacco in any form whether in the form of Cigarette, Cigar, Beedis or otherwise with the aid pipe, wrapper or any other instruments.
and partly as a result of that, promulgated a comprehensive National Tobacco Control Act in 2003.\textsuperscript{175}

Section – 3 (b) offers an inclusive definition of the term “Cigarette.” It says.

\textbf{“Cigarette”} includes, –

(i) any roll of tobacco wrapped in paper or in any other substance not containing tobacco,

(ii) any roll of tobacco wrapped in any substance containing tobacco, which, by reason of its appearance, the type of tobacco used in the filter, or its packaging and labelling is likely to be offered to, or purchased by, consumers as cigarette, but does not include beedi, cheroot and cigar\textsuperscript{176}

Section 2(p) says that ‘tobacco products are the products specified in the schedule. The schedule mentions cigarettes, cigars, cheroots, beedies, cigarette tobacco, pipe tobacco and hookah tobacco, chewing tobacco, snuff, panmasala or any chewing material having tobacco, gutka and tooth powder containing tobacco.\textsuperscript{177}

Section 3(l) defines ‘public place’ as meaning any place to which the public have access, whether as of right or not and includes auditorium, hospital buildings, railways waiting room, amusement centers, restaurants, public offices, court buildings, educational institutions, libraries, public conveyances and the like which are visited by general public but does not include any open place.\textsuperscript{178}

\textsuperscript{175} This Act 2003 replaces earlier statute known as the Cigarettes (Regulation of Production, Supply and Distribution) Act 1975. Sec. 3 of the 2003 Act defined 16 terms whereas Sec. 2 of 1975 Act, defines 13 terms. The three new terms included are public place Sec. 3(l), smoking Sec. 3(n) and tobacco products Sec. 3(p). The said Act (34 of 2003) contains 33 sections and one schedule. This act is amended by Act 38 of 2007 known as The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production Supply and Distribution) Amendment Act, 2007. To further strengthen it the parliament has also enacted Rules, 2004, The prohibition on sale of cigarettes and other tobacco products around educational institutions Rules, 2004, The Cigarettes and Other Tobacco Products (Packaging and Labelling) Rules, 2008, The Prohibition of Smoking in Public Places Rules, 2008.

\textsuperscript{176} Id Sec. 3 (b)

\textsuperscript{177} The industrially manufactured smokeless tobacco product, gutka is comparatively recent and specifically Indian problem. Areca nut, an indispensable component of gutka, causes oral sub mucous fibrosis – a debilitating disease with no known cure that is precursor to oral cancer Areca nut, an indispensable component of gutka, has been evaluated as carcinogenic with highest level of evidence (sufficient) by the International Agency for Research on Cancer. From public health point of view, this highest toxic industrial product needs strict control measures. supra note 171.

\textsuperscript{178} The Supreme Court in \textit{Murli S, Deora v. U.O.I.} AIR 2002 SC 40 banned smoking in public places, namely auditorium, hospital buildings, health institution, educational institutions, libraries, courts. See for details \textit{Infra} page 142 of this chapter.
Section 4 of the Act says that “no person shall smoke in public place provided that in a hotel having thirty rooms or a restaurant having seating capacity of thirty persons or more and in the airports, a separate provision for smoking area or space may be made.”

Section 5 of the Act prohibits advertisement of cigarettes and other tobacco products. No person engaged in the, production, supply or distribution of cigarettes or any other tobacco products shall advertise.

Section 6 of the Act makes an important provision that no person shall sell, offer for sale, or permit sale of, cigarette or any other tobacco product to any person who is under eighteen years of age of or in an area within a radius of one hundred yards of any educational institution.

Section 20 of the Act provides punishment for the manufacturers, seller, manufacturer, distributor, for failure to give specified warning, and nicotine and tar contents. The punishment for first conviction is imprisonment for a term which may extend to two years or with fine upto Rs. 5,000 or with both. For the second or subsequent conviction, the maximum punishment is five years and with fine upto Rs. 10,000.

Section 21 of the Act lays down punishment for violating section 4 of the Act which prohibits smoking in public places. The fine upto 200 rupees can be imposed.

Section 22 provides punishment for contravening section 5 which makes provision for the prohibition of advertisement of cigarette and tobacco products. The maximum punishment for first conviction is two years imprisonment or fine may extend to one thousand rupees or with both. For second or subsequent conviction,
the maximum punishment may extend to five years imprisonment or with fine which may extend to five thousand rupees.

Section 28 of the Act states that any offence committed under Section-4 or Section-6 may either before or after institution of the prosecution be compounded by such officer authorized by Central Government or State Government and from amount which may not exceed two hundred rupees.

Thus, the Act makes elaborate provisions to check cigarette smoking and other tobacco products. States like Delhi and Goa had created their own tobacco control laws. Chandigarh also became the first smoke free city of India by implementing the Central Tobacco Control Act w.e.f. from July 15, 2007. It is the first city where there is absolute compliance of smoke free laws by all educational institutes and all public offices which display non smoking mandatory boards and signs. People’s complaint would be sent to the Health Department.

Judicial Response

Even prior to the enactment of the Act of 2003, the courts addressed the problem of cigarette smoking under the Act of 1975.

The Kerala High Court in K. Ramakrishnan v. State of Kerala was seized with the matter in an original petition highlighting the dangers of passive smoking. It was prayed that smoking in any form, whether in the form of cigarette, cigar, beedies or otherwise in public places was illegal, unconstitutional under Article 21 of the Constitution as maintenance of health and pollution free environment fell within its ambit. Justice K. Narayana Kurup while referring to the facts and figures to establish horrifying impact

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181 AIR 1999 Kerala 385. (paras 8, 25) Chief Justice A R. Lakshmanan, and Justice K. Narayana Kurup were the judges who delivered the judgement.
of smoking, active as well as passive on society, also pointed out the various diseases such as, cancer, asthma, pulmonary diseases, respiratory illness etc. as the evil effects of smoking. To quote:

"The dangers of passive smoking are real broader than once believed and parallel those of direct smoke. It has long been established that smoking harms the health of those who smoke. Now new epidemiologicals studies and reviews are strengthening the evidence that it also harms the health of other people nearby who inhale the toxic fumes generated by the smoker, particularly from the burning end of the Cigarette... passive smoking ranks behind direct smoking and alcohol as the third leading preventable cause of death."

The court also held that tobacco smoking in public places fell within the mischief of the penal provisions relating to "public nuisance" as contained in the Indian Penal Code and also the definition of "air pollution" as contained in statutes dealing with environment and the Air (Prevention and control of pollution) Act 1981. Accordingly, the court issued appropriate directions.

The Hon'ble Supreme Court in the landmark judgement of Murli S. Deora v. Union of India, examined the matter of smoking exhaustively. The Court held that smoking is injurious to health and may affect not only the health of smokers but health of passive smokers might also be injuriously affected without their any fault.

Directing banning of smoking in public places, the Court observed that realizing the gravity of the situation and considering adverse effects of smoking on smokers and passive smokers, the Court directed and prohibit smoking in public places and issued directions to the Union of India, State Governments as well as the

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182 Id, at 387-389.
183 Id, at 390 (para 14).
184 Id, at 398.
185 supra note 178. Justice M.B. Shah and Justice R.P. Sethi were the judges who delivered this judgement.
Union Territories to take effective steps to ensure prohibiting smoking in public places namely: 186

1. Auditoriums
2. Hospital Buildings
3. Health Institutions
4. Educational Institutions
5. Libraries
6. Court Buildings
7. Public Office
8. Public Conveyances including Railways.

Undoubtedly, there can be no cause justifying the Cigarette smoking. There is enough evidence and data to demonstrate that smoking causes a large spectrum of diseases. That, however did not explain all tobacco attributable mortality in India. In the first exercise of its kind, there was a large unexplained gap between deaths from four main group of diseases attributable to tobacco (Cancer, heart disease, Stroke, Lung disease) and total tobacco attributable deaths (354000 vs 629000). Research results from India have demonstrated that smoking increases the risk of death among TB patients and causes 200,000 extra TB deaths. India has a large TB problem and operates a national programme of TB control it however, does not yet addresses smoking that seems to be a major cause of death among TB patients.

It has also been well demonstrated that smoking by pregnant women causes several adverse reproductive outcomes. Indian women generally do not smoke (although situation may be changing now). 187 The prevalence of smokeless tobacco use among women in India, however is quite high and results show that tobacco use during pregnancy causes low birth weight babies. Heavy smoking cuts a woman’s chance of getting pregnant by damaging the womb lining. A

186 Id, at 41 (para 9).
187 Indian Journal of Medical Research, 123 at 580, (May 2006).
   http://icmr.nic.in/ijmr/2006/may/0501.pdf (accessed on August 11, 2009)
study found smoking can directly affect the uterus, making it more difficult for an embryo to implant in the wall of the womb. Heavy smokers have a much lower chance of achieving pregnancy. Among heavy smokers who became pregnant, the risk of a multiple pregnancy was higher.\textsuperscript{188}

To further strengthen the Constitutionally protected right to health and healthy life, Delhi High Court in the case of \textit{Mr. Mahesh Bhatt and Kasturi and Sons v. Union of India and Anr.},\textsuperscript{189} said that the object and purpose behind the Act and the Rules, which are comprehensive legislation is to regulate, trade, sale distribution and advertisement of tobacco products and discourage the use of tobacco products. The Central government is competent to enact the said Act and amend the Rules in order to achieve its objective and purpose.

The Court further stated that the said enactment are primarily to protect public health and the restrictions imposed on the print media to prevent publication of brand names, logos of tobacco product are also in larger public interest and to promote right to life. Moreover an advertisement for a life saving drug may be more important and leads greater public interest than an advertisement for pure trade consideration. Hence, disposed of the petition accordingly.

In the second \textit{Mahesh's Bhat's case}, the Court further dealing with ill effects of smoking held that anything which advances the Act

\begin{footnotesize}
\begin{itemize}
\item Smoking is generally known to reduce fertility and is linked to low birth weight babies (by 105 g), smaller gestational period (by 6 days) and carries a high risk for still births. K.S. Reddy, P.C. Gupta, Report on tobacco control in India, New Delhi, Ministry of Health and Family Welfare, Govt. of India, 2004.
\item Manu/DE/0185/2008. The Division Bench comprised of justices Mukul Mudgal and Sanjiv Khanna. In this case constitutional validity of Act of 2003, rules of 2005 were challenged by the producer of films and television programmes by filing of writ petition and argued that amended rules are ultra virus of the parent statute and the prohibition of advertisements of Tobacco product is against the provision of Article 19(1) (a), 19(2). Restrictions imposed on electronic media and cinematographic films are not reasonable.
\end{itemize}
\end{footnotesize}
of consumption of tobacco or smoking has rightly found prohibition in terms of notification of the ministry of information and broadcasting. The Board of film certification is to be guided by the various principles set out therein and it is duty bound to ensure that scenes which tending to encourage, justify or glamorize consumption of tobacco or smoking are not shown. The discouragement of any promotion of smoking activity thus, form the very basis of consideration while granting a certificate by the Board of film certification. Sanjay Kishan Kaul, J. pointed out rightly that smoking is a habit which has permeated ages. Its harmful effects well-known. It is a habit most difficult to give up but the consequences are so damaging not only to the person indulging in it but to other people in and around him that it has formed a part of a larger debate worldwide leading to passing of necessary legislation to discourage it.\textsuperscript{190} The strength to give it up however often comes from within rather than without in the form of any legislations.

In short, it can be said that a major tobacco control strategy is an appropriate price policy to keep the price of tobacco products high with regular increases above the level of inflation. This is because price and consumption, especially initiation by young, show a strong inverse correlation everywhere in the world.\textsuperscript{191} After increase in taxes although there is a reduction in tobacco consumption, yet it is not

\textsuperscript{190} \textit{Mahesh Bhatt v. Union of India and Anr.} Manu/DE/0087/2009. It is making of such rules which as formed a part of challenge in the writ petition filed by Mr. Mahesh Bhatt. The representation from the film industry and the media dealing with stringent provisions rise to subsequent amendments diluting the stringency of the provisions but even the provisions a per the amendment dated 20.10.2006 are subject matter of challenge.

\textsuperscript{191} The Central Government has made no changes whatsoever in the taxation on tobacco and tobacco products in the Union Budget for 2009-10. This unchanged tax rates on tobacco products be it beedis, cigarettes or gutka. Delhi, Maharashtra and Rajasthan impose a 20% value added tax on cigarettes a rise of 7.5% in four years. There is no change in excise structure excise rate this year. \url{http://wwwasstmanagement.hsbc.com/in/attachments/mutualfunds/downloads/budget-0709.pdf}. (accessed on August 10, 2009).
enough to off set the gains of increased taxes due to high addictive nature of tobacco use. Even for cigarette, prices have not increased much in real terms. In fact the Union Budget 2009-10 can be said to be Cigarette friendly and tobacco friendly but health unfriendly budget. This simply contributes to the continuing tobacco problem in India and hampers public health to a great extent.

On the whole, there are a few successes but much remains to be done to reduce adverse public health consequences of tobacco in India.

(xii) Environment and Health

As we all know that environmental destruction and pollution has seriously threatened the human life, health and livelihood. Effects of different types of environmental pollution on health can be described as the air pollution, water pollution, and noise pollution. Health hazards from these are briefly described below:

(i) **Air pollution** – The main health problems caused by gaseous air pollutants are bronchitis, asthma and lung cancer. Polluted air contains carcinogens such as hydro-carbons. Compounds extracted from polluted air have produced cancer in experimental animals, in various researches.

(ii) **Water pollution** – the main threat to health from water pollution is posed through contamination with disease producing bacteria or viruses. The important bacteria are those causing typhoid, dysentery, diarrhoea and cholera. Among the viruses the most important ones are polio virus and hepatitis virus. Industrial wastes or trade effluent, domestic under ground water, thermal pollution, radioactive wastes are responsible for water pollution. If
we see these days the presence of uranium in the water in Bathinda district has become cause of worry for people and authorities as uranium has chemical properties which are more hazardous for health than its radioactivity\footnote{we see these days the presence of uranium in the water in Bathinda district has become cause of worry for people and authorities as uranium has chemical properties which are more hazardous for health than its radioactivity\footref{we see these days the presence of uranium in the water in Bathinda district has become cause of worry for people and authorities as uranium has chemical properties which are more hazardous for health than its radioactivity}. 

(ii) **Noise pollution** – In the modern days noise pollution has serious effects on human health. Noise has both auditory and non-auditory effects depending upon the intensity and the duration of the noise level, such as hearing loss, illtemper, disturbance of sleep, effect on cardiovascular system, hormonal effects, effect on reproductive system, effects on the nervous system etc.\footnote{Noise pollution – In the modern days noise pollution has serious effects on human health. Noise has both auditory and non-auditory effects depending upon the intensity and the duration of the noise level, such as hearing loss, illtemper, disturbance of sleep, effect on cardiovascular system, hormonal effects, effect on reproductive system, effects on the nervous system etc.}. The term “noise pollution” has not been defined in the Central Legislature Acts anywhere. But the environment (Protection) Act, 1986 recognises noise as an environmental pollutant and empowers the Central Government to frame rules prescribing the maximum permissible limits for noise in different areas.\footnote{It has been defined as “unwanted sound, a potential hazard to health and communication dumped into the environment without regard to adverse effect it may have on unwilling ears.”\footref{It has been defined as “unwanted sound, a potential hazard to health and communication dumped into the environment without regard to adverse effect it may have on unwilling ears.”}}

It has been defined as “unwanted sound, a potential hazard to health and communication dumped into the environment without regard to adverse effect it may have on unwilling ears.”\footcite{Infra note 198}

To strengthen the right to health and environmental protection our Parliament enacted following different statutes

- **The Air (Prevention and Control of Pollution) Act, 1981.**

This Act contains 54 sections. The main object of this act is to provide for the prevention, control and abatement of air
pollution, to provide for the establishment of central and state boards to lay down the standards to maintain quality of air.

Section 37 of the Air Act deals with the penalties for offences. The punishment shall be imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine. In case the failure continues an additional fine of rupees five thousand per day after the conviction shall be imposed. If the failure continues beyond a period of one year after the date of conviction, the punishment shall be imprisonment for term which shall not be less than two years but which may extend to seven years and with fine.

Water (Prevention and Control of Pollution) Act, 1974 (as amended in 1988). This act contains 64 sections. The fundamental objective of the Water Act is to provide clean drinking water to the citizens and to establish Central and State Boards for the prevention and control of water pollution to provide penalties for the contravention of the provisions of the said Act. Under the said Act different penalties have been prescribed for violating different provisions of the Act. Section 41 provides the punishment as imprisonment for a term which may be extended to three months or with fine which may be extended to Rs. 10,000/- or with both. In case the failure continues, an additional fine may be imposed which may be extended to Rs. 5,000/- per day during the period for which

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199 Sec. 37 of the Air Act 1981 talks about the failure to comply with provision of Sec. 21 (Restrictions on the use of certain industrial plants) Sec. 22 (Persons on industry etc. not to allow emission of air pollutants in excess of the standards laid down by State Board) and Sec. 31A (Central Government Power to give directions).

200 Sec. 41 of the water act, 1974 talks about failure to comply with directions under sub Sec. (2) or sub Sec. 3 of Section 20 (Power to obtain information) or orders issued under clause (c) of sub Sec. (1) of Sec. 32 (Emergency measures in case of pollution of stream or well) or directions issued under sub Sec. (2) of Sec. 33 (Power of Board to make application to courts for restraining apprehended pollution of water in streams or wells) or Section 33A (Central Government Power to give directions).
failure continues after the conviction for the first such failure. Section 41 further provides that whoever fails to comply with:

(i) for violation of orders or any direction prohibiting discharge of any polluting matter into stream or well or land;
(ii) for violation of court order restraining pollution of water;
(iii) for violating the direction of the Board;

In respect of each such failure and on conviction the punishment shall not be less than one year and six months imprisonment but which may extend to six years and with fine. If failure continues an additional fine, which may extend to Rs. 5,000/- per day during the period of failure may be imposed. If the failure continues for beyond a period of one year, then the imprisonment shall not be less than two years but which may extend to seven years and with fine.

Section 45-A prescribes\textsuperscript{201} quantum of punishment when no penalty for an offence has been provided elsewhere in this Act. The section provides:-

"Whoever contravenes any of the provisions of this Act or fails to comply with any order or direction given under this Act, shall be punishable with an imprisonment which may extend to three months or with fine which may extend to ten thousand rupees or with both and in the case of a continuing failure, contravention or with an additional fine which may extend to five thousand rupees for everyday during which such contravention or failure continues after conviction for the first such contravention or failure continues after conviction for the first such contravention or failure".

In India till recently there was no direct legislation to control noise pollution. Now under the Environment (Protection) Act 1986, Noise Pollution (Regulation and Control) Rules, 2000 have been framed by the Central Government. These are 8 rules and 1 schedule. But this does not mean that earlier there was no law at all to control this pollution. It was being controlled under various other

\textsuperscript{201} Section 45-A was inserted in 1988 by way of an amendment in the Water Act as this section isa'ResiduaryPenaltSection',http://indiacode.nic.in/fullact1.asp?fnm=193422 (accessed on September 11, 2009)
laws such as law of torts, IPC, Cr.PC, the Air Craft Act, 1934 etc. Briefly speaking the need of the hour is to create awareness among people about these pollution and its effects on health.

**In Re: Noise Pollution Case**, the Supreme Court examined several questions, such as What is noise? What are its adverse effects? Whether noise pollution runs in conflict with the fundamental rights of people? The court recognized the ‘Noise’ as a nuisance and health hazard. Noise is a type of atmospheric pollution. It is a shadowy public enemy whose growing menace has increased in the modern age of industrialization and technological advancement. It has become one of the major pollutants and has a serious effects on human health. For example, hearing loss, disturbance of sleep, annoyance, physiological effects, effects on fetus (unborn child). Noise pollution by bursting of fire crackers, is also a health hazards since it is responsible for both air pollution and noise pollution.

Although there is no specific provision to deal with noise pollution, the Environment (Protection) Act, 1986 confers powers on Government of India to take measures to deal with various types of pollution including noise pollution.

The Court further stated that there should be one simple but specific and detailed legislation dealing with several aspects referable to noise pollution and which will provide measures to control it. While issuing directions to the manufacturers of fire crackers the

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203 In Re: Noise Pollution – implementation of the laws for restricting use of loudspeakers and high volume producing sound, systems v. U.O.I. AIR 2005 SC 3136. The verdict was given by former Chief Justice R.C. Lahoti and Justice Ashok Bhan. In the instant case, PIL was filed by an engineer the immediate provocation for filing the petition was that a 13 year old girl was a victim of rape (as reported in newspaper). Her cries for help sunk and went unheard due to blaring noise of music over loudspeaker in the neighbourhood. The victim girl later in the evening, set herself ablaze and died of 100% burn injuries. The petitioner complains of noise created by use of loudspeakers and want to restrict the use of high volume noise produced audio video systems and loudspeakers.
204 Id at 3142-44 (paras 21, 22, 23, 24, 25, 31, 38).
court directed the Department of Explosives (DOE) to undertake necessary research for the evaluation of chemical composition to check the noise level. When loudspeakers are to be used at public place, noise standards to be maintained.

No horn should be allowed at night (between 10 p.m. and 6 a.m.) in residential areas. The Hon’ble Court emphasized upon need to create awareness through special talks and lectures in the schools to highlight the menace of noise pollution and suitable chapters may be added in the text books. Special public awareness campaigns in anticipation of festivals, events and ceremonial occasions where at firecrackers are like to be used, need to be carried out.205

(xiii) Under the Umbrella of Environment Act, Hazardous Wastes (Management and Handling) Rules 1989 have also been enacted to manage hazardous wastes. There are total 21 rules and 8 schedules. The State Pollution Control Board may refuse, cancel, or suspend an authorization issued under these rules. Rule 16 incorporates the “Polluters Pay Principle” and provides206 that the occupier, transporter and operator of a facility shall be liable for damages caused to the environment resulting due to improper handling and disposal of hazardous wastes listed in the schedules 1, 2, 3 of the said rules. According to rule 3 (14) of the said rules 1989 'hazardous waste' means any waste which by reason of any of its physical, chemical, reactive, toxic, flammable, explosive or corrosive characteristics causes danger or is likely to cause danger to health or

205 Id at 3163-65 (paras 159, 168).
206 Rule 16(2) provides that the occupier and operator of a facility shall also be liable to reinstate or restore damaged or destroyed elements of the environment at his cost, failing which the occupier or the operator of a facility, as the case may be, shall be liable to pay the entire cost of remediation or restoration and pay in advance an amount equal to the cost estimated by the State Pollution Control Board or Committee. The advance paid to State Pollution Board or Committee towards the cost of remediation or restoration shall be adjusted once the actual cost of remediation or restoration is finally determined and the remaining amount, if any, shall be recovered from the occupier or operator of the facility. For details see Union Carbide Corporation v Union of India AIR 1990 SC 273 popularly known as the "Bhopal Gas Tragedy case".
environment whether alone or when in contact with other wastes or substances, and shall include-

(a) Wastes listed in column (3) of schedule 1; such as furnance/reactor residue and debris, Oily sludge emulsion, Drill cutting containing oil, lead ash, tar containing wastes slop oil, Acid, residues textile chemical residue; spent carbon etc.\(^{207}\)

(b) Wastes having constituents listed in Schedule 2 if there concentration is equal to or more than the limit indicated in the said schedule.\(^{208}\)

(c) Wastes listed in Lists A and B of schedule 3 (Part A) applicable only in case (s) of import or export of hazardous wastes. In schedule 3 List A contains the lists of wastes applicable for only import and export like metal and metal bearing wastes (alloy contaminants of cadmium, lead, ashes from the incineration of insulated copper wire etc). List B contains precious metals, (gold silver, platinum iron and steal scrap, Nickel, Zinc, cobalt, Titanium scrap etc.\(^{209}\)

The Government of India amended the Rules in the year 2000 and further in the year 2003. These amended rules brought in following basic modification with respect to definition of wastes identified the types of hazardous wastes likely to be generated from different industrial processes. Categories of wastes banned for export and import had also been defined in these

\(^{207}\) See for more details, Schedule 1 of Rules 1989

\(^{208}\) If a component of the waste appears in one of the risk classes listed in schedule 2 and the concentration of the component is equal to more than the limit for the relevant risk class, the material is then classified as hazardous waste. List of wastes constituents with concentration limits include such as Arsenic compounds, cadmium and cadmium compounds, organ-chlorine pesticides etc.

\(^{209}\) See Schedule 3 of the said rules 1989. Waste products of these chemical and allied industries are restricted and cannot be allowed to be imported into the country without Directorate –General of Foreign Trade (DGFT) License.
amendments, fulfilling the Basel convention, ratified by India in 1992. The basic objective of the Basel convention was for control and reduction of transboundary movements of hazardous and other wastes subject to the convention, prevention and minimization of these generation, environmentally sound management of such wastes and for active promotion of the transfer and use of cleaner technologies.

The hazardous waste generated in the country per annum is estimated to be around 8 million tonnes out of which 70% is being generated by five states, namely Gujrat, Maharashtra, Tamil Nadu, Karnataka and Andhra Pradesh210. Though the Hazardous wastes rules were notified in 1989, the implementation on the ground has left alot to be desired. Lack of proper infrastructure and strict enforcement mechanism has led to hazardous waste, still remaining a grave problem. New emerging wastes and loopholes in the current legislation have also contributed to this. There are still problems of hazardous waste not being managed in sound environmental conditions, improper dumping and lack of proper treatment and disposal facilities. There are also reports of illegal import of hazardous material in the country. The Central Government has recently further amended the Hazardous waste rules known as 'Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008'211 The new categorization will open the floodgates for import of recyclable hazardous wastes to India, making it a global waste destination. In times, when India is finding it difficult to manage its own waste, this shift is certainly

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not warranted. The rules does not propose streamlined collection mechanism of hazardous waste specially new wastes like E-waste. There is lack of inadequacy of disposal sites.

The need of the hour is to have stringent implementation of the existing rules, which will lead to proper collection mechanism, sound recycling technologies, adequate and scientifically designed disposal sites. Enabling recovery and reuse of useful material from hazardous waste and there by reducing waste for final disposal is certainly a welcome thought.


The Act is to provide for public liability – insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance and for matters connected therewith or incidental thereto. This Act made it mandatory for occupiers of hazardous activity to do public liability insurance to provide minimum relief to the victims.

Few important provisions under the said act are as follow:

Section 3 (1) of the said Act provides, “where death or injury to any person (other than a workman) damage to any property has resulted from an accident or the owner shall be liable to give such relief as is specified in the schedule for such death, injury or damage.”

Section 4(1) of the Act reads, “Every owner shall take out, before he starts handling any hazardous substance one or more insurance policies providing for contracts of insurance thereby he is insured against liability to give relief under sub-section (1) of section-3.

Id. Sec. 2(c).

The Public Liability Insurance Act, 1991 contains 23 Sections and one schedule.

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212 “Accident” means an accident involving a fortuitous, sudden or unintentional occurrence while handling any hazardous substance resulting in continuous, intermittent or repeated exposure to death, of or injury to, any person or damage to any property but does not include an accident by reasons only of war or radioactivity. Sec.2 (a) The Public Liability Insurance Act, 1991. http://envfor.nic.in/legis/public/public1.html (accessed on 10 June, 2008).

213 “Handling”, in relation to any hazardous substance, means the manufacture, processing, treatment, package storage, transportation by vehicle, use, collection, destruction, conversion, offering for sale, transfer or the like of such hazardous substance. Id. Sec. 2(c).

Provided that all owner handling any hazardous substance immediately before the commencement of this Act shall take out such insurance policy or policy as soon as may be and in any case with in a period of one year from such commencement.

Section 14(1) of the Act provides, “wherever contravenes any of the provisions of section 4 or fails to comply with any direction issued under section 12, he shall be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years, or with fine which shall not be less than one lakh rupees, or with both.”

(2) Whoever, having already been convicted of an offence under sub-section (1) is connected for the second offence, he shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine which shall not be less than one lakh rupees.”

In terms of transparency requirements and public involvement in the regulatory process there are drawbacks in the Act. There is operational and institutional structure problems while considering the application of these legislation. We know that in practice, when ever the accident takes place, it takes years to fix the liability and the quantum of compensation and it is the weaker stratas of the society who are affected and to a large extent they are the victim of this. The amount of compensation is very small. The officers of the insurance companies do not pay any attention unless they are given bribes. In such a situation the Government should keep a close watch on it. Only the enactment of law will not serve any purpose. It is also the duty of Government to ensure proper implementation of the Act.


The hospital waste is also the hazardous pollutant of environment and health peril to the human beings. As a large chunk of patients being treated in hospitals suffer from communicable diseases, the bacteria, virus, or infectious microorganisms of the
diseases may spread diseases to another if proper precautionary measures are not adopted. The hospital wastes belong to special waste which is generated during the diagnosis, treatment or immunization of human beings, animals or in research activities of medicine and biotechnology or in the production or testing of biological. The patients suffering with chronic diseases like HIV, cancer, tuberculosis, respiratory problems and skin diseases are more prone to danger with the medical hazardous and infectious waste. The important enactment which govern the enforcement of law, to monitor the waste generation and proper handling of biomedical waste is the Bio Medical waste (Management and Handling) rules 1998. The important objective of these rules is to control the indiscriminate disposal of hospital waste/bio-medical waste etc.

These rules are applicable to all healthcare establishments which include hospitals, nursing homes, veterinary hospitals, animal houses, pathological labs and blood banks, generating hospital wastes. It shall be the duty of every occupier of an institution generating bio-medical waste, to take all steps to ensure that such waste is handled without any adverse effect to human health and the environment. There must be strict implementation of provisions of these rules otherwise sometimes there are cases in rural areas when

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215 A.V. Narsimha Rao, ‘Hospital Waste and Challenges in Enforcing the Law’, Kare Law Journal, (November, 2005) at 80, Moreover hospital acquired infections are becoming very common.

216 Ibid.

217 Ibid, at 82.

218 A notification in exercise of the powers conferred by Section 6, 8 and 25 of the Environment (Protection) Act, 1986 was published in the Gazette vide S.O. 746(E), dated 16th Oct. 1997 inviting objections from public within 60 days from the date of the publication of the said notification on the Bio Medical waste (Management and Handling) Rules, 1998. These published in the Gazette of India, Ext, Pt II, S3(ii) dated 27.7.1998. These rules are 14 in number and six schedule with these rules.


the used syringes are allegedly purchased by some illegal medical practitioners, from rural areas thereby pushing innocent lives into grave danger of acquiring deadly diseases.

Further, chemical and other hazardous industries has also become a pressing problem in the modern industrial society. Hazardous substances include flammables, explosives, heavy metals such as lead, arsenic and mercury; nuclear and petroleum fuel by products; dangerous micro-organisms, and scores of synthetic chemical compounds like DDT and dioxins. Exposure to toxic substances may cause acute or chronic health effects.\textsuperscript{221} The Environment (Protection) Act, 1986 covers the pollution caused by hazardous substances. The Central Government is authorized to make rules for providing administrative, regulatory and legal measures to control and regulate the hazardous wastes and the solid wastes.

In the case of \textit{All India Plastic Industries Association}\textsuperscript{222}, one Mr. Vinod Kumar Jain filed a Public Interest litigation painting a grim picture of the failure by the civic agencies in Delhi to effectively manage solid waste. One of the issue raised was concerned with the management of plastic waste, which is said to be non-biodegradable. It is said to enter the food chain resulting in health risks. The disposal of plastic waste in streams, canals, water bodies etc. compounds the problem caused to the environment. To assist the court in issuing appropriate directions the Division Bench Constituted a Committee and on the basis of gave recommendations

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\textsuperscript{221} supra note 198 at 363.
\textsuperscript{222} \textit{All India Plastic Industries Association through its Secretary Gupta Plastic Industries v. Government of NCT of Delhi, Department of Forests and Wildlife, Manu/DE/0954/2009. The Division Bench comprised of Justice Madan B. Lokur and Justice A.K. Pathak also see 'unscientific disposal causes environmental degradation' The Tribune July 26, 2009 and 'Polythene users to be penalised' the gravity of the situation can be judged from the facts that out of the total 350 tonnes of urban waste generated everyday, only about 70 to 75 tonnes is being collected for disposal. \textit{Ibid}}
of the committee the court issued the directions to the Delhi Government that it shall issue appropriate notification forbidding use of plastic bags in the main markets and local shopping centres apart from hotels, hospitals and malls. The notification was issued by Delhi Government dated 7th January 2009, accordingly.

Beside the above discussed constitutional and legislative provisions and rules, the government has also framed health policies at different interval of time which in brief are discussed as under:

**National Health Policy 1983**

There were several policies dealing with the health issues of citizens but till 1983, India did not have a formal National Health Policy. A National Health policy was formulated in 1983.

In its first National Health Policy, 1983, India was committed to attaining the goal of 'health for all', by the year 2000; through universal provision of comprehensive primary health care services. The main focus was the formulation of an integrated and comprehensive approach towards future development of health services. The policy aimed at a thorough overhaul of the existing approaches to education and training of medical and health personnel and reorganization of health infrastructure. It envisaged the complete integration of all plans for health and human development with the overall national socio-economic development process integrating all health related sectors. With multi sectoral approach, the policy sought to provide universal, comprehensive primary health care services relevant to the actual needs and priorities of the community at a cost which the people can afford, ensuring that the planning and implementation of various health programmes are through the organized involvement and participation of the community, adequately utilizing the services
being rendered by private voluntary organizations, active in the health sector.\footnote{223} 

The policy also focused on decentralized primary health care with people’s involvement in the identification of their health needs and priorities and in the implementation and management of the various health programmes.

**National Population Policy, 2000**

Efforts made for improving health standards have been neutralized by the rapid growth of the population. The National Population Policy, 2000 (NPP 2000) is a unique initiative which incorporates lessons learnt and more forward by replicating success. The national socio-Demographic goals laid by policy have been:\footnote{224}

- Prevention and control of communicable disease and bring about convergence in implementation of related social sector programmes so that family welfare becomes a people centred programme.
- Achieve universal immunization of children against all vaccine preventable disease.
- To commit the nation to a reduction of the infant mortality rate to under 30 per 1000 by the year 2010.
- To set up national technical committee on child health with a view to harness professional inputs regarding implementation of programmes for child survival with special focus on new born health. The policy has also emphasized on the strict enforcement of the MTP laws.

• Make school education upto the age of 14 free and compulsory and reduce drop outs at primary and secondary schools levels to below 20 percent for both boys and girls.\textsuperscript{225}

• To Promote delayed marriage for girls, not earlier than age 18 and preferably after 20 years of age.

• To see that projects of crude birth rate, infant mortality rate and TFR, if NPP 2000 is fully implemented.\textsuperscript{226}

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<thead>
<tr>
<th>Year</th>
<th>Crude Birth</th>
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<th>Total fertility</th>
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<td>71</td>
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<td>1998</td>
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<td>2010</td>
<td>21.0</td>
<td>30</td>
<td>2.1</td>
</tr>
</tbody>
</table>

The policy also lays down that the projects, programmes and schemes premised on goals and objectives of this Population Policy 2000 would be adequately funded in view of their critical importance to national development. Preventive and primitive services such as ante-natal and post-natal care for women, immunization for children and contraception will continue to be subsidized for all those who need the service. Priority in allocation of funds will be given to improving health care infrastructure at the community and primary health centres, sub-centre and village levels. The NPP, 2000, is to be largely implemented and managed at panchayat and levels, in co-ordination with the concerned States/UT Administrations.

\textsuperscript{225} To achieve this, already the right to education bill is passed by both houses of Parliament. See for details The Times of India August 6, 2009. also see \textit{Infra Chapter-V.}

\textsuperscript{226} \textit{Ibid.}
National Health Policy 2002

It has been formulated taking into consideration the inequalities, and uneven distribution of financial resources. The policy mainly states as follows:

- It is the principle objective of NHP-2002 to evolve a policy structure which reduces the inequities and allows the disadvantaged sections of society a fairer access to public health services.
- It addresses the problem of acute shortage of nurses/doctors/beds etc.
- It recommends measures to ensure the future health security of country because there is an apprehension that globalization will lead to an increase in the costs of drugs, thereby leading to rising trends in overall health costs.
- It aims to focus on setting the mental health institutions under trained manpower supervision. It also envisages the work of decentralized mental health services for ameliorating the more common categories of disorders.
- It will examine the possibility of adoption of information technology in the health sector.
- It will also examine the possible means for ensuring adequate availability of personnel with specialization in the ‘public health’ and ‘family medicine’ disciplines, to discharge the public health responsibilities in the country.
- Professional medical ethics in the health sector is an area which has not received much attention. Professional practices

228 Id Para 2.2.3 National Health Policy 2002
229 Id Para 2.10.1.
230 Id Para 2.11.1
231 Id Para 4.13.1.1
232 Id Para 2.16.3
233 Id Para 2.9.1
are perceived to be grossly commercial and the medical profession has lost its elevated position as a provider of basic services to fellow human beings. Besides this, the new frontier areas of research involving gene manipulation, organ/human cloning and stem cell research there is uncharted risk of creating new life forms, which may irreversibly damage the environment as it exists today. The policy of 2002 recognizes that this moral and religious dilemma, now pervades mainstream health sector issues\textsuperscript{234}.

- It will make an appropriate policy recommendation for efficient enforcement of reasonable quality standards for food and drugs\textsuperscript{235}.

- It envisages the identification of specific programmes targeted at women's health, the recommendations of the policy, in regard to the expansion of primary health sector infrastructure, will facilitate the increased access of women to basic health care\textsuperscript{236}. The policy also commits the highest priority of the Central Government to the funding of the identified programmes relating to women's health.

- The policy is focused on those diseases which are principally contributing to the disease burden like TB, Malaria and Blindness, HIV/AIDS\textsuperscript{237}.

- The main objective of this policy is to achieve an acceptable standard of good health amongst the general population of the country. It will endeavour to achieve the time bound goals mentioned in the Box\textsuperscript{238}. 

\begin{thebibliography}{9}
\bibitem{234} \textit{Id} Para 2.21
\bibitem{235} \textit{Id} Para 2.22.1
\bibitem{236} \textit{Id} Para 4.20.1
\bibitem{237} \textit{Id} Para 5.2
\bibitem{238} \textit{Id} Para 3
\end{thebibliography}

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Goals to be achieved by 2000-2015

<table>
<thead>
<tr>
<th>Disease</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eradicate Polio and Yaws</td>
<td>2005</td>
</tr>
<tr>
<td>Eliminate Leprosy</td>
<td>2005</td>
</tr>
<tr>
<td>Eliminate Kala Azar</td>
<td>2010</td>
</tr>
<tr>
<td>Eliminate Lymphatic</td>
<td>2015</td>
</tr>
<tr>
<td>Achieve Zero level growth of HIV/AIDS</td>
<td>2007</td>
</tr>
</tbody>
</table>

The health needs of the country are enormous yet NHP-2002 has had to make hard choices between various priorities and operational options. It does not claim to be a road-map for meeting all the health needs of the population of the country. The policy focuses on the need for enhanced funding and an organizational restructuring of the national public health initiatives, in order to facilitate more equitable access to the health facilities.

If we see the performance and Government initiatives in the public health sector have recorded some noteworthy success overtime. Small pox and Guinea worm disease have been eradicated from the country; polio is on the verge of being eradicated; leprosy, kalaazar, and filariasis can be expected to be eliminated in the foreseeable future. There has been a substantial drop in the total fertility rate and infant mortality rate. The success of initiative taken in the public health field are reflected in the progressive improvement of many demographic infrastructural indicators overtime as may be seen from table given below:
Achievement through the year 1951-2005. 241

<table>
<thead>
<tr>
<th>Demographic indicator</th>
<th>1951</th>
<th>1981</th>
<th>2000</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>Life expectancy</td>
<td>36.7</td>
<td>54</td>
<td>64.6</td>
<td>NA</td>
</tr>
<tr>
<td>Crude Birth Rate</td>
<td>40.8</td>
<td>33.9</td>
<td>26.1</td>
<td>23.8</td>
</tr>
<tr>
<td>Crude Death Rate</td>
<td>25</td>
<td>12.5</td>
<td>8.7</td>
<td>7.6</td>
</tr>
<tr>
<td>Infant Mortality Rate</td>
<td>146</td>
<td>110</td>
<td>70</td>
<td>58</td>
</tr>
</tbody>
</table>

Source: Registrar General of India.

In respect of TB, the public health scenario has not shown any significant decline in the pool of infection amongst the community, and there has been a distressing trend in the increase of drug resistance to the type of infection prevailing in the country. HIV/AIDS has emerged on the health scene since the declaration of the NHP 1983. Today Swine Flu cases caused from H1N1 virus are on rise. Need is to effectively monitor and regulate it to check its widespread in the country.

Another area of grave concern in the public health domain is the persistent incidence of macro and micro-nutrients deficiencies, especially among women and children. In the vulnerable subcategory of women and the girl child this has the multiplier effect through the birth of low birth babies and serious ramifications of the consequential mentally and physically retarded growth. Today most rural health centres still have inadequate specialists, medical equipment and drugs despite the National Rural Health Mission in the year 2005.

**National AIDS Prevention and Control Policy 2002**

National AIDS prevention and control policy 2002 was announced with the aim of bringing AIDS transmission at zero level by 2007 by adoption of following strategies.242

1. Prevention of further spread of the disease by making the people at large and specially the high-risk groups aware of its implications and provide them with the necessary tools for protecting themselves from getting infected.
   - Control of sexually transmitted diseases among sexually active and economically productive groups;
   - Promotion of condom use is a measure of prevention from HIV infection.
2. To provide an enabling socio-economic environment so that individuals and families affected with HIV/AIDS can manage the problem; and
3. Improving services for the care of people living with AIDS (PLWA) in times of sickness, both in hospitals and at homes, through community health care;

For this purpose the policy addresses the following components of the national AIDS control program for bringing in a paradigm shift at all levels.

A. Program Management
B. Advocacy and Social Mobilization
C. Surveillance, monitoring and Research
D. Target Intervention
E. Sexual Transmission Disease Control Program
F. Condom Promotion program.
G. Policy for Blood Safety.

Though ground breaking medical and pharmaceutical inventions and discoveries have been achieved in the last 15 years, these have failed to control the AIDS epidemic. The disease has spread at an alarming rate especially affecting the developing countries like India. At present more than 33 million people
worldwide are estimated to be infected with HIV. Only 15% of AIDS patients in India receive medical treatment.243

According to United Nations AIDS Control Organisation in 2007 India has 2.5 million people living with HIV/AIDS, with infection. In which 70,000 are children under 15 years old. Every year, about 21,000 children are infected through mother to child transmission and thousands of children are affected because their parents are HIV positive.244

To sum up, in our country, the participatory management of civil society in health care is of recent origin. For the last decade one can notice a significant shift in this area, as the proactive role is being played by various organizations in this direction. Further, the setting up of consumer protection councils, the appointment of ANMs and health workers covering a majority of the villages in India, and the grants being given by the government to NGOS and other agencies for raising awareness about health issues, consumer protection etc, are steps in the right direction. Still there is further need to take more effective measures, in order to strengthen the society participation in health care in the country.